

Multimedia
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In the Matter of:

CABLE ROYALTY DISTRIBUTION : CRT Docket 83-1

1982 - Phase II :

----- X

(This volume contains pages 695 through 828)

Room 450
1111 20th Street, Northwest
Washington, D. C.

Friday, July 27, 1984

The hearing in the above-entitled matter commenced
at 10:05 a.m., pursuant to adjournment.

BEFORE:

| | |
|--------------------|--------------|
| THOMAS BRENNAN | Chairman |
| EDDIE RAY | Commissioner |
| MARIO F. AGUERO | Commissioner |
| MARIANNE MELE HALL | Commissioner |

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1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

(202) 234-4433

1 APPEARANCES:

2 On behalf of MPAA:

3 ARTHUR SCHEINER, ESQ.
4 Wilner & Scheiner
5 Suite 300, The Thurman Arnold Building
6 1200 New Hampshire Avenue, Northwest
7 Washington, D. C. 20036

8 On behalf of Multi-Media:

9 ARNOLD P. LUTZKER, ESQ.
10 Dow, Lohnes & Albertson
11 1225 Connecticut Avenue, Northwest
12 Washington, D. C. 20036
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C O N T E N T S

| <u>WITNESS</u> | <u>DIRECT</u> | <u>CROSS</u> | <u>REDIRECT</u> |
|---------------------|---|--------------|-------------------|
| ALLEN R. COOPER | 702 | 746 | 826 |
| <u>EXHIBITS</u> | | | <u>IDENTIFIED</u> |
| MPAA Exhibits 1 - 5 | | | Previously marked |
| MM... Exhibit No. 5 | Dist. Carr. by Cable Systems WBBM & WGN | | 723 |
| MPAA Exhibit No. 6 | SS Cable System Sub. | | 724 |
| MPAA Exhibit No. 7 | NSI Average Weekly Estimates - 1982 | | 727 |
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| MPAA Exhibit No. 11 | Adjust. Nielsen Study Total Viewing Hrs. for Syndicated Programming | | 741 |
| MPAA Exhibit No. 11 | FT Dist. Signal Carr. of US Comm. TV Stations | | 743 |
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| Multi-Media No. 12 | Article - TV Digest 4-11-83 | | 762 |
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C O N T E N T S (Continued)EXHIBITSIDENTIFIED

Multi-Media No. 14 Copyright Office Study
of Public Domain Films 797

P R O C E E D I N G S

(10:05 a.m.)

CHAIRMAN BRENNAN: The hearing will resume.

Mr. Lutzker.

MR. LUTZKER: I would like to first, with respect to the listing of stations that appeared on Exhibit 3 of Multi-Media's pre-hearing statement, there was a WLQL listing; the correct call letters for that should be WOLO, Columbia, South Carolina.

Secondly, a question was raised with respect to the calculations which appeared in Exhibit 5, the advertising study for the Donahue program. We confirmed with the person who did the calculations that there was, in fact, an error in Exhibit 5 and I have prepared an amended exhibit. Basically, what was done was, was on the item that says less sales and local news, 26.5 percent. The figure that appears in Exhibit 5 was the transposition, instead of 26.5 percent, it was 25.6 percent. That figure was obviously -- that figure would have been less than the 26.5 percent. So, the bottom line of net spot sales was greater than the actual net spot sales, making the correction to the net spot sales as is provided on Exhibit 5, it shows that the estimated percentage of spot sales for the Donahue program in 1982 would be 1.78 percent, rather than 1.76 percent.

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1 CHAIRMAN BRENNAN: Without objection, we will
2 receive the amended exhibit.

3 (Whereupon, the document was marked for
4 identification as MM Exhibit Amended 5.)

5 MR. SCHEINER: Sir, let us simply reserve on this,
6 and if we have any questions, hopefully, we can work it
7 out with counsel; if not, we will take whatever other
8 steps are appropriate.

9 CHAIRMAN BRENNAN: That is agreeable to the Tribunal.
10 Anything else, Mr. Lutzker?

11 MR. LUTZKER: No.

12 CHAIRMAN BRENNAN: We turn then to the consolidated
13 case of MPAA and associated program suppliers.

14 Mr. Scheiner.

15 MR. SCHEINER: Ordinarily, a very brief statement.
16 In my prior appearance, I appeared on behalf of the
17 Settling Parties. Today I appear on behalf of the program
18 suppliers, who number something in excess of 70 claimants,
19 who have voluntarily entered into an agreement with each
20 other with respect to their respective shares in the
21 category of program suppliers. The remaining claimant
22 with whom we have not reached an agreement is Multi-Media.

23 I would note that in last year's hearings before
24 the Tribunal, after persistent questioning and, particularly
25 Commissioner Coulter, as to the basis relied upon by

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1 Multi-Media, it was volunteered by Mr. Thrall that in the
2 next round, namely the one we are engaged in now, they
3 were looking towards coming up with a new formula which
4 they hopefully would be able to work out in conjunction
5 with Nielsen.

6 It is our view of the presentation made to you
7 yesterday that it is, in essence, a tired replay of prior
8 submissions and presentations by Multi-Media. And the
9 principal objective of our presentation today, in the
10 combined direct and rebuttal, will be to demonstrate the
11 errors, the fallacious assumptions, and, in our view, the
12 inadequacies of the Multi-Media presentation.

13 One recurring question that had been raised in
14 prior proceedings by members of the Tribunal and directed
15 to all claimants, "Tell us, please, how your case this
16 year differs from the case last year". And that refrain
17 had continued throughout the proceedings.

18 Our view of the Multi-Media case is that there
19 are, indeed, significant changed circumstances, the major
20 one, which we will cover in our presentation, is the move
21 of Donahue on WGN, retransmitted by satellite on a live
22 basis, a moved from WGN to WBBM, and the consequences
23 that flow from that move, we think, constitute the major
24 change from prior years. And a major change which warrants
25 a substantially reduced award to Multi-Media.

1 There are other changes with respect to programs
2 that have been dropped, programs which were the subject of
3 testimony in earlier years, which were no longer carried
4 in 1982. That, too, is a change, admittedly of lesser
5 significance, but in those two respects their case does
6 differ from the case presented last year.

7 With that, I would like to turn to my witness,
8 Mr. Cooper.

9 CHAIRMAN BRENNAN: Mr. Cooper has been previously
10 sworn in this proceeding.

11 Whereupon,

12 ALLEN R. COOPER

13 was called as a witness and, having been previously sworn,
14 was examined and testified as follows:

15 MR. SCHEINER: Our first series of exhibits have
16 been previously exchanged and I have labeled as Exhibit 1,
17 a document which bears the caption Effect of Switch from
18 WGN to WBBM on Distant Signal Viewing of Donahue.

19 DIRECT EXAMINATION

20 BY MR. SCHEINER:

21 Q Do you have that before you, Mr. Cooper?

22 A Yes, sir.

23 Q Would you please explain that exhibit for us?

24 A This exhibit is prepared from the Special Nielsen
25 Studies commissioned by the MPAA and its represented

1 claimants from the Nielsen Company for the years 1981 and
2 1982. The main product of these Nielsen studies is a
3 figure on the total number -- the extent to which specific
4 programs are viewed as distant signals in cable households.
5 And the data in Exhibit 1 showed that in 1981, distant
6 signal viewing of the Donahue program, via retransmissions
7 by cable systems of WGN produced 6,534,060 household view-
8 ing hours during the 16 weeks that the study encompasses.

9 In 1982, WGN did not carry Donahue, the Chicago
10 station that replaced WGN was WBBM. And WBBM as a distant
11 signal, was viewed in far fewer cable system households,
12 the total number of household viewing hours attributed
13 to the Donahue Show via WBBM in 1982 was 118,680.

14 The effect of this switch from GN to BBM was a
15 decrease in the number of household viewing hours of
16 6,415,380, or 98.2 percent.

17 I would like to now briefly tell you the reason
18 for this change, and it relates to the distant signal
19 carriage of these two stations. In 1982, during the
20 second accounting period which covers the period from
21 July through December 1982, we have examined all of the
22 statements of accounts filed by cable systems in the
23 Copyright Office. We found the following information for
24 these two stations, WGN and WBBM. WGN was carried as a
25 distant full-time signal by 1,369 cable systems; WBBM by

1 38 cable systems on this basis. WGN, in addition, was
2 carried by 20 cable systems on a distant part-time basis,
3 versus 14 for WBBM.

4 On a local basis, WGN was carried by 1,367 cable
5 systems, versus 93 for WBBM. If you just count the distant
6 and local, WGN was carried by a total of 2,756 cable
7 systems versus 145 for WBBM.

8 Let's look at the subscribers of these cable
9 systems, of those that carried WGN on a distant full-time
10 basis in 1982; the number of subscribers was 10,404,161.
11 For WBBM the total was 421,605. The part-time figures
12 on distant were 367,090 for WGN and 171,110 for WBBM.

13 And I would just like to give you the total figure
14 for all subscribers of all cable systems, local and
15 distant that carried the two stations in 1982, that total
16 for GN was 11,938,680; for WBBM it was 891,949. This is
17 an enormous difference, particularly the distant full-
18 time figure of 10.4 million versus .4 million.

19 Q Let me ask you, Mr. Cooper, is there a difference
20 in the benefit evolved by cable systems from the carriage
21 of WGN by via satellite as compared with the carriage of
22 WBBM which is not by cable?

23 A Yes, sir. Mr. Thrall made special reference to
24 this yesterday and has also made it in previous years,
25 that the carriage of the Donahue Show by WGN via satellite

1 made the program available on a current basis throughout
2 the United States, to cable subscribers.

3 On the other hand, when the switch was made to
4 WBBM, only those household that - - cable households that
5 could receive WBBM had access to that day's Donahue pro-
6 gram, all other broadcast stations that transmitted the
7 Donahue Show, as Mr. Thrall testified yesterday, did this
8 on what is called a bicycle basis, with a delay ranging
9 up to five weeks for the program.

10 I think that yesterday in their exhibits Multi-
11 Media put stress on the fact that the Donahue Show was
12 accorded recognition by the FCC as an interview-news
13 program. News it newsworthy and timely, and the difference
14 between availability on the day when something is news-
15 worthy, or five weeks later is very substantial.

16 So, the capability of cable subscribers to receive
17 the Donahue program on a live basis on the same day that
18 it was broadcast by WGN was an enormous advantage versus
19 the delayed reception via WBBM's origination.

20 CHAIRMAN BRENNAN: Commissioner Ray?

21 COMMISSIONER RAY: Do you have any information
22 about additional broadcast stations -- let me start this
23 again. When Donahue was removed from WGN, did that
24 provide an opportunity for the producers to syndicate
25 additional broadcast stations that would then be picked up

1 by cable systems? Do you have any figures to show the
2 additional cable homes that were picked up by the
3 additional broadcast stations?

4 THE WITNESS: I understand that. There are two
5 parts of your question that I have to answer. Number one,
6 our data with respect to the household viewing hours of
7 the Donahue Show are not based upon GN alone, or not
8 based upon WBBM alone; they are based upon the viewing of
9 all stations that carry the Donahue Show and their re-
10 transmission as distant signals in cable households, that's
11 number one.

12 And so whatever pickup there was to viewing of
13 retransmissions of other stations are reflected in our
14 total data for household viewing of Donahue.

15 COMMISSIONER RAY: However, Mr. Cooper, Exhibit 1
16 only shows the comparison between WGN and WBBM.

17 MR. SCHEINER: In later exhibits we will cover
18 that point.

19 THE WITNESS: We are focusing on this one because
20 this is the primary thing.

21 The second part of the situation relates -- we
22 will also provide, or Multi-Media will provide data on
23 whether or not they were able to sell more stations, or
24 fewer stations over WGN.

25 I will tell you informally, or formally, I would

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1 testify to the fact that a larger number of stations had
2 larger local ratings, local broadcast audiences in 1982,
3 than in 1981.

4 In other words, broadcast stations were helped
5 by the fact that it was not retransmitted by WGN.

6 COMMISSIONER RAY: Thereby increasing, perhaps --
7 and this is the question -- increasing the carriage of
8 -- distant signal carriage of the Donahue Show?

9 THE WITNESS: No, sir, I think what I was referring
10 to is the extent to which the ratings of the stations
11 increased as a result of the change from GN to BBM would
12 mean to me that the syndicator, or in this case Multi-Media,
13 should presumably receive more revenue from the stations
14 that were carrying the Donahue Show on a broadcast basis.

15 COMMISSIONER RAY: Thank you.

16 CHAIRMAN BRENNAN: Commissioner Hall.

17 COMMISSIONER HALL: I may be repeating, Commissioner
18 Ray, but can we assume that the basic number of viewers
19 is going to remain comparatively constant between '81 and
20 '82, and the issue is whether they are getting current
21 shows and how they are getting them?

22 THE WITNESS: No, the basis situation, Commissioner
23 Hall, is different than that. The basic argument is that
24 -- and the facts will show, that the total extent of view-
25 ing of Donahue as a retransmitted program by cable viewers

1 has declined enormously between 1981 and '82. And we will
2 show you the precise numbers.

3 COMMISSIONER HALL: Are you attributing that
4 primarily to the fact that the show is no longer live,
5 because it is not being taken off the satellite?

6 THE WITNESS: Not only is it no longer live, but
7 it is no longer available to the cable systems throughout
8 the United States by virtue of the satellite feed. In
9 other words, you can't have viewing as a distant signal,
10 if the program isn't available on the cable systems as a
11 distant signal.

12 COMMISSIONER HALL: Okay, thank you.

13 THE WITNESS: Commissioner Hall, Commissioner Ray,
14 I think the answer to your question will be fully set
15 forth in the data that is contained in the exchanged
16 exhibits and in later exhibits, which will show the
17 extent of carriage of Donahue and other Multi-Media pro-
18 grams as a distant signal in cable households. That will
19 be shown specifically.

20 COMMISSIONER HALL: I have further questions, but
21 I will wait.

22 THE WITNESS: The main argument that I think is
23 important is the question that Commissioner Ray raised,
24 you notice that the issue is not that our account of
25 household viewing hours for Donahue was based strictly on

1 GN and strictly on BBM, but includes every stations that
2 broadcast Donahue in every cable system around the country.

3 MR. SCHEINER: If you have any reservations, raise
4 them in connection with the exhibit.

5 BY MR. SCHEINER:

6 Q Would you turn to Exhibit 2, please?

7 A (Perusing documents)

8 Q Which bears the caption Syndicated TV Series and
9 Movies Credited with at Least One Million Household Viewing
10 Hours. Mr. Cooper, as the title indicates, it covers
11 movies as well, and is it correct that those movies indicated
12 by the paren M after the various titles?

13 A Yes, sir.

14 Q And that M does indicate movies. Would you please
15 explain what this exhibit shows?

16 A Yes, this is an exhibit based upon the Special
17 Nielsen Study of 1982, which as I indicated earlier, provides
18 us with the total number of household viewing hours in
19 cable households of each program's viewing as a distant
20 signal, just precisely what the royalties are to be
21 distributed -- the base on which royalties are distributed.
22 And here we show a total of 229 programs and movies which
23 had household viewing hours in excess of one million during
24 1982.

25 Q Mr. Cooper, which of these programs are owned by

1 claimants represented by MPAA than program suppliers; 228
2 of them are owned by claimants represented by MPAA. The
3 sole exception is found between 63 and 64, and that appears
4 on the second page of this exhibit, where you will see the
5 Donahue Show.

6 Q Let me ask, going back to the Commissioner's
7 questions with respect to Exhibit 1, the household viewing
8 hours for Donahue, is that based on carriage of WBBM only?

9 A No, sir, it is based upon the carriage of Donahue
10 by any and all of the stations that were in our sample of
11 89 stations.

12 Q Does this exhibit require any further explanation?

13 A Yes, sir, I think that there is some, this differs
14 from an exhibit similar to this which was provided to the
15 Tribunal, essentially at the Tribunal's request in 1980
16 and 1981 proceedings. What we have done here that is
17 different is, (a) we have cut it off at a million, and we
18 cut it off at a million in order to provide the Tribunal
19 with something that they never had before and that is a
20 listing of movies, in addition to the series. I have
21 testified in previous years that the number of movies,
22 individual feature titles for which MPAA claimants received
23 shares of royalty were in the thousands. And to have made
24 a complete list of both series and movies would have
25 destroyed a lot of trees.

1 So we have cut it down to a million, and I wanted
2 to put the movies in for a very special reason in Exhibit
3 2. And the reason for that is that movies are specials,
4 movies are unlike series, they are shown once by a station
5 and they are shown by this station, not by another station
6 on a simultaneous basis; they are unlike series. They are
7 identical to a musical special, such as the ones that Multi-
8 Media show, in terms of their being available during only
9 one showing, or during possibly the 16 sweep weeks, rather
10 than the multiple showing that account for series.

11 The first movie that you will see listed is Love
12 With a Proper Stranger, number 93, which accounted for
13 2,810,615 household viewing hours. This is more than the
14 total figure of household viewing hours for all Multi-Media
15 program, except the Donahue Show, exclusive of the Donahue
16 Show.

17 In other words, all of the Multi-Media product,
18 the household viewing hours was less than the viewing for
19 this Love With A Proper Stranger movie.

20 There are a couple of other things I would like
21 to do, if I may, please. One, Mr. Thrall yesterday in
22 his testimony referred to Multi-Media as the outstanding
23 producer of country music specials and series programs.
24 I would like to call your attention to number 19 on this
25 list, which is Solid Gold, which is not country music, it

1 is pop music, rather than country music. But I would like
2 you to see the relative ranking of Solid Gold which was
3 carried in November on 194 stations, with an average rating
4 of eight and a share of 18, total audience per telecast of
5 over 7.8 million households, and ranked number 12 among
6 all syndicated series.

7 COMMISSIONER RAY: Solid Gold is not a special
8 though.

9 THE WITNESS: No, sir, this is a series. I want
10 to compare that, if you would, with the two major series -
11 musical series that Multi-Media has presented.

12 BY MR. SCHEINER:

13 Q Which are those?

14 A Pop Goes the Country, which is one of their series,
15 it is carried by 95 stations, rather than 194; it had a
16 three rating, rather than a eight rating, and on a broad-
17 cast basis, it had 1,369,000 households, versus 7.8 million
18 for Solid Gold.

19 Nashville on the Road, which is their other series,
20 was carried by 78 stations, again versus 194, and its
21 households were 1,216,000 on a broadcast basis, versus
22 7.8 million.

23 Q Where do those two Multi-Media programs appear on
24 this list?

25 A They do not appear because their viewing was less

1 than a million households.

2 COMMISSIONER HALL: Mr. Cooper, again, I am not
3 quite following. Your Exhibit 2 represents viewing hours
4 for the full year?

5 THE WITNESS: For the 16 -- perhaps, we should go
6 back a little bit.

7 COMMISSIONER HALL: Is it the same 16-week sweep
8 period that the previous --

9 THE WITNESS: Oh, yes, all of the Nielsen Study
10 material relates to 16 weeks during the week.

11 COMMISSIONER HALL: This is your NSI study?

12 THE WITNESS: Exactly, that is what the Nielsen
13 Special Study refers to, and these are four weeks in
14 February, May, July and November.

15 COMMISSIONER HALL: I may be reading this wrong,
16 but the Exhibit 4 which was compounded yesterday indicates
17 to me the Top Country Hits had a total audience of 11
18 million people. If the show were an hour show, to me
19 that is 11 million viewing hours. Am I reading that
20 wrong?

21 THE WITNESS: Yes, you are reading it wrong,
22 Commissioner.

23 First, the total household viewing hours that were
24 in that list -- it is a tremendously interesting exhibit,
25 by the way. This is based upon NTI, it is the broadcast

1 audience, not the viewing in cable households.

2 COMMISSIONER HALL: Thank you.

3 THE WITNESS: The second thing that is tremendously
4 interesting about that exhibit, Commissioner, was Mr.
5 Thrall's argument yesterday -- I hope that you heard him --
6 was that total audiences were not significant, that what
7 advertisers considered significant was another measure
8 called average audience. And why he has total audience
9 there --

10 BY MR. SCHEINER:

11 Q Mr. Cooper, --

12 COMMISSIONER HALL: Is your data --

13 THE WITNESS: This is strictly cable.

14 COMMISSIONER HALL: This is cable?

15 THE WITNESS: Distant carriage cable viewing,
16 strictly, only, exclusively.

17 COMMISSIONER RAY: One question, and I am sure you
18 can make it very short for me, just to cut down on the
19 amount of homework that I have to do. What was the 1980
20 figure for Donahue?

21 THE WITNESS: The 1980 figure for Donahue was
22 8,697,070.

23 COMMISSIONER RAY: Thank you.

24 COMMISSIONER HALL: If I could take one more
25 minute, your list in Exhibit 2 of Donahue is four million

1 hours?

2 THE WITNESS: Yes, ma'am.

3 COMMISSIONER HALL: Your list in Exhibit 1 for
4 Donahue under BBM is 118 hours. Am I comparing apples
5 and oranges again?

6 THE WITNESS: You are looking again, BBM -- the
7 figure in Exhibit 2 for all stations that carry Donahue.

8 COMMISSIONER HALL: Oh, I see.

9 THE WITNESS: And Exhibit 1 deals only with WBBM.
10 WBBM was one of the stations that carried Donahue.

11 COMMISSIONER HALL: Then your Exhibit 1, your
12 1981 figure for Donahue as carried by GN alone is six
13 million. You are asserting that it has dropped -- what
14 was carried on one channel was six million in '81, what
15 was carried on all channels in '82, you are asserting, is
16 four millions on all distant --

17 THE WITNESS: Yes, ma'am, that's 6.5 million on
18 GN alone, versus 4.2 million on all stations.

19 COMMISSIONER HALL: Okay, we're getting there.

20 THE WITNESS: I would like to mention one more
21 show, if you would, and that is more in the country-western
22 theme, Hee-Haw, it is number 127 on this list. And that,
23 again, I am just giving you the broadcast data for it, it
24 was ranked number four among all syndicated series, it
25 was carried by 189 stations and had a rating of nine, and

1 a broadcast viewing audience of 8,008,010 -- eight million
2 households.

3 COMMISSIONER RAY: Broadcast?

4 THE WITNESS: Yes, this is straight out of the ROSP.
5 Again, with the remark that was made about the supremacy
6 of Multi-Media in the area of music programs.

7 COMMISSIONER RAY: None of your specials, with
8 the exception of movies, make the top 2.9?

9 COMMISSIONER RAY: No single special, other than
10 movies.

11 BY MR. SCHEINER:

12 Q Would you compare the ranking of Donahue, which
13 appears, again, on page two, with Merv Griffin?

14 A Yes, the Merv Griffin program is shown as number
15 46, with 6,462,952 viewing hours. I am sure that Mr.
16 Scheiner asked the question because this was a particular
17 area of questioning in previous proceedings. As a matter
18 of fact, in the 1981 proceeding, Multi-Media introduced an
19 Exhibit A which was a comparison of the viewing hours of
20 Donahue, Merv Griffin and Mike Douglas. The figures that
21 were given for 1981, showed Donahue ranking 20th; Merv
22 Griffin 36th; Mike Douglas 69; in 1980, Donahue ranked 19;
23 Merv Griffin, 18; and Mike Douglas, 29.

24 The point that was made was the superior value of
25 the Donahue Show, versus the Merv Griffin Show, as far as

1 cable household viewing was concerned, in 1981 and in 1980,
2 what we show here is that this has been reversed in 1982.

3 COMMISSIONER RAY: Is Merv Griffin carried on the
4 super stations?

5 THE WITNESS: I am not certain, it may be, or it
6 may not be. All I can tell you, Commissioner -- let me
7 answer the question, that is easier --

8 COMMISSIONER RAY: Not that it matters.

9 THE WITNESS: Well, you asked the question, let me
10 answer it. (Perusing documents) Merv Griffin is not
11 carried by WTBS, it is not carried by WGN, it is not carried
12 by WOR.

13 BY MR. SCHEINER:

14 Q Were you present yesterday, Mr. Cooper, when Mr.
15 Thrall raised some question with respect to Nashville Alive,
16 which appears as 55 on this list?

17 A Yes, sir.

18 Q Do you recall his testimony on that?

19 A Yes, he said, well, what kind of a syndicated
20 program is Nashville Alive? As far as he knew, it was
21 carried only by station WTBS. He mentioned then something
22 which is tremendously important, and that is he acknowledged
23 the fact that Nashville Alive was produced by a program
24 supplier and licensed to WTBS. This is the basis on which
25 Nashville Alive was included here, that is a syndicated

1 program sold to WTBS, and this happens to be the carriage
2 of this program on WTBS alone.

3 The program has been offered to other stations and
4 may or may not be sold to others.

5 Q You made reference to Mr. Thrall's testimony claim-
6 ing a preeminent position of Multi-Media for the use of
7 programs, yet at the same time you note that none of these
8 programs appear on this list, is that correct?

9 A That is absolutely correct.

10 Q Are there other programs, other than those produced
11 by Multi-Media, which do appear on this list?

12 A Yes, sir, and we have already renumerated some of
13 them.

14 Q Would you please complete the list?

15 A I would also add --

16 COMMISSIONER HALL: Give us all of them.

17 THE WITNESS: Well, I have not made a thorough
18 examination, I know there are 19 Solid Gold; number 55
19 Nashville Alive, number 77, the Lawrence Welk Show; number
20 127, Hee-Haw; and I think that that about completes the
21 list.

22 BY MR. SCHEINER:

23 Q If there are no further questions with respect to
24 this exhibit, let's move on to Exhibit 3, which bears the
25 caption Viewership of Multi-Media Series, Specials Via

1 Distant Signals in Cable Households.

2 Will you please explain this exhibit for us?

3 A Yes, sir. This is a comparison of the 1981-1982,
4 data from the Special Nielsen Study. It shows that --

5 Q Just so it is clear, once again, are we talking
6 only cable carriage of distant --

7 A Only viewership of distant signals in cable house-
8 holds during the 16 weeks.

9 Q I think it would be helpful to underscore the fact
10 that -- and I believe without exception this is the testimony
11 by way of explanation. That the Multi-Media showings were
12 based on broadcast viewing; the only issue of concern in
13 this case is cable carriage of distant signals. And,
14 particularly, Commissioner Hall, we find huge discrepancies
15 in the data; for the most part, if not entirely, extends
16 from what we consider to be erroneous, misleading and
17 really quite irrelevant showings with respect to broadcast-
18 ing, when the issue here is cable carriage of distant
19 signals.

20 Now, with that caution, would you please explain
21 Exhibit 3?

22 A When you follow across on the top line, we show
23 that MPAA represented claimants in 1981's study provided
24 1,254,000,000 household viewing hours as distant signals
25 in cable households of their programs. In 1982, the figure

1 was 1,525,000,723 this is largely reflective of the in-
2 crease in the number of cable households between the two
3 years. And, also, an increase in the satellite carriage
4 of WTBS and WGN.

5 We show below, in the second line, the total figure
6 for all programs of Multi-Media Show Biz, series and
7 specials that we are able to identify from the Nielsen
8 studies. And the figure for 1981 was 12,949,027 hours
9 and the figure for 1982, is 7,496,000 hours. The total
10 for MPAA represented claimants and the Multi-Media as
11 shown in both instances for 1981, it is 1,267,312,000
12 and in 1982, it was 1,533,219,008.

13 We then show the percentage that the Multi-Media
14 series and specials accounted for of the total, in 1981,
15 this was 1.0 percent; in 1982, it is 0.5 percent.

16 Q Mr. Cooper, in the bottom half of this exhibit you
17 list a number of programs. Is it not correct that three
18 of the program -- I'm sorry, these are Multi-Media programs,
19 are they not?

20 A In 1982 you are talking about?

21 Q Yes.

22 A Yes, sir.

23 Q Dolly, Marty Robbins, Porter Wagoner, as I under-
24 stand it, are not listed in Multi-Media presentations?

25 A No, sir.

1 Q But they are listed by you, can you explain that?

2 A Yes, we identify the syndicator, or the producer
3 of programs from various published sources, and these
4 published sources indicate that Dolly, Marty Robbins and
5 Porter Wagoner, were programs distributed by Multi-Media,
6 and/or Show Biz. Our Nielsen study is irrespective of
7 anything that is listed by a claimant; we pick up the
8 viewing of that and then we go back and identify who the
9 owners are of the programs.

10 So, in the 1982 study, even though apparently
11 Multi-Media was no longer syndicating or producing the
12 Dolly Show, the Marty Robbins Show, or the Porter Wagoner
13 Show, we still found stations transmitting the program,
14 and there was viewership to that, and that is duly reported
15 here.

16 Q Would you turn to Exhibit 4.

17 A I think in the Donahue Show, the difference between
18 the 1982 and the 1981 figure that is shown here, is
19 6,337,000 viewing hours. I merely reference that that
20 this is not the same as the figure in Exhibit 1, it is
21 a lesser figure than the loss between GN and BBM, and gives
22 you some dimension of the small increase in the viewing
23 of Donahue as a distant signal from other stations, in
24 the sense, offsetting GN, but it is virtually insignificant.

25 Q Exhibit 4 bears the caption Share of Program

1 Suppliers Award in 1982, Attributable to Multi-Media, if
2 Multi-Media were MPAA Represented.

3 Would you explain this, please?

4 A Our distribution formula with every one of our
5 MPAA represented claimants is precisely in accordance on
6 a pro rata basis with the total number of household viewing
7 hours each of their programs has accounted for, relative
8 to the total number of household viewing hours for all
9 MPAA represented claimants.

10 So we have then, if we were taking the total pool,
11 which in 1982 was 70 percent, we have negotiated settling
12 with broadcasters of this figure, settling with SIN at
13 that figure, and MPAA represented claimants received 68.60
14 percent. That would leave 0.25 percent for Multi-Media.

15 On the other hand the next column looks at it
16 from the standpoint of the program suppliers' pool alone,
17 which was assuming less than 100 percent, in which case,
18 on a Phase II basis, if Multi-Media were represented by
19 MPAA, they would receive 0.5 percent of the total distributed
20 by MPAA.

21 In other words, if Multi-Media were represented
22 just like every other program supplier claimant is repre-
23 sented by MPAA, they would have received 0.5 percent of
24 the monies that we would be distributing.

25 MR. SCHEINER: That completes our testimony with

1 respect to those exhibits which initially comprised our
2 portion of the direct case. And exhibits which had been
3 previously exchanged and filed.

4 I would now like to turn to additional exhibits
5 which were prepared in the nature of rebuttal, and in
6 light of yesterday's proceedings.

7 This bears the caption Distant Carriage by Cable
8 Systems of WBBM and WGN-Chicago, Exhibit 5.

9 (Whereupon, the document was marked for
10 identification as MPAA Exhibit No. 5.)

11 BY MR. SCHEINER:

12 Q Do you have a copy of that?

13 A Yes, I do.

14 Q Would you please explain this exhibit, Mr. Cooper?

15 A Yes, these are, just for the record, the numbers
16 that I formerly read when I was explaining Exhibit 1,
17 testifying about Exhibit 1 at the beginning of this pro-
18 ceeding. These are those numbers that I read orally.
19 There is one thing about this exhibit that I would like to
20 emphasize to the Tribunal, and this is free of any im-
21 perfections related to Nielsen or anybody else, it has
22 nothing to do with Nielsen, nothing to do with any rating
23 system. This is strictly from the sworn statements of
24 accounts filed by cable systems in the second accounting
25 period of 1982. Nothing to do -- no imperfections from

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1 that standpoint. That is, I think, the critical element.

2 COMMISSIONER RAY: These are statements of accounts
3 filed with the Copyright Office?

4 THE WITNESS: That's correct. There are no pro-
5 jections, no estimations, these are the numbers as filed.

6 BY MR. SCHEINER:

7 Q If there are no questions with respect to that
8 exhibit, I will continue.

9 The next exhibit, Exhibit 6, bears the caption
10 Super Station Cable Systems Subscribers.

11 (Whereupon, the document was marked for
12 identification as MPAA Exhibit No. 6)

13 BY MR. SCHEINER:

14 Q Would you explain this exhibit, Mr. Cooper?

15 A Yes, this exhibit, as indicated, is based upon
16 data from Cablevision Magazine. Actually, it was prepared
17 for another purpose, but I think this is now in rebuttal --
18 it is very significant in this case. The issue related
19 to the importance of the Donahue Show to WGN, the trigger
20 that was referred to as far as this carriage was concerned.

21 Donahue went off WGN in December of 1981, and if
22 Donahue was so important to WGN, we should have seen a
23 precipitous decline in the number of cable systems carrying
24 WGN. I don't see such a decline in the number of cable
25 systems or the number of subscribers of cable systems that

1 carried WGN, lacking Donahue. As a matter of fact, these
2 data indicate that the number of subscribers of the cable
3 systems receiving WGN since January 1982, went up 52 per-
4 cent.

5 COMMISSIONER RAY: Could this have something to
6 do with the FCC deregulation of cable distant signal?

7 THE WITNESS: There is a question about that, the
8 reason, of course, is that the whole time period with
9 respect to the adjusted rate and so forth, it was a period
10 of adjustment for a lot of cable systems. I think this
11 reflects the FCC's decision and must also reflect the
12 Tribunal's decision with respect to an adjusted rate.
13 Taking both of those factors into account, the difference
14 that occurred, also, is the lack of Donahue on WGN and
15 the obvious invisibility of any profound deleterious impact
16 on the cable systems' desire to retransmit WGN.

17 COMMISSIONER HALL: Mr. Cooper, given the normal
18 housewife consumer who turns on Phil Donahue at such and
19 such channel every day, effective January 1982, she is
20 not going to find him on that channel, correct?

21 THE WITNESS: That's correct.

22 COMMISSIONER HALL: Now, is it erroneous to assume
23 that she is going to sit there and punch all those buttons
24 on that cable box and find him somewhere, and even if she
25 doesn't know its alive, she is going to find him somewhere?

1 THE WITNESS: Well, generally, I think it has been
2 testified that the Donahue Show is available on a broadcast
3 basis to 98 percent of the TV homes in the United States.
4 So, she is going to find it locally, if she is going to
5 find it else where, but she can find the Donahue Show, if
6 she wanted to.

7 I think what happened, in my view, is that the
8 cable subscriber who was accustomed to viewing it via WGN,
9 would now view it on the local station, as a local live
10 program.

11 COMMISSIONER HALL: She may not even realize that
12 she is no longer getting it through a cable, but rather
13 could be picking it up on the airways and she doesn't
14 really really know what channel it is on.

15 THE WITNESS: She knows, because the only reports
16 that we have, Commissioner Hall, is what she has written
17 down respecting which program she watched at what time,
18 and what channel she watched it on. It is the combination
19 of those two pieces of data that yield the information
20 that we have. It is not just that she viewed Donahue,
21 that this is based on, it is the Donahue Show and the
22 cable and the channel that it was viewed on, it is the
23 combination of data.

24 BY MR. SCHEINER:

25 Q Now, turning to Exhibit 7, which bears the caption

1 Report on Syndicated Programs, NSI Average Week Estimates,
2 November '82.

3 (Whereupon, the document was marked for
4 identification as MPAA Exhibit No. 7.)

5 BY MR. SCHEINER:

6 Q Mr. Cooper, will you take some care in explaining
7 this exhibit, first the source, and second, the data set
8 out?

9 A These are extracts from the Nielsen Station Index
10 report on syndicated programs for November 1982. The
11 two pages of Exhibit 7, the top page is the first page
12 of a multi-page listing for the Donahue Show in November
13 1982, and the second page is the first page of what they
14 call a ranking data, households ranking data from the
15 same report.

16 We have had a lot of testimony about the broadcast
17 audiences of the Donahue Show, I think just for your
18 interest, you will see on the top of the page, in the
19 right-hand corner, the number of markets, the number of
20 stations, the total TV households, the DMA percent of
21 US -- that 96, in the upper right-hand corner of the
22 first page, that means that the Donahue Show, these 176
23 stations, were viewable in 173 markets that represented
24 96 percent of all US TV households.

25 I had previously said 98 --

1 Q That is over-the-air viewing, is it not?

2 A Yes, it is available for over-the-air viewing. I
3 had previously said 98, Commissioner Hall, and that was
4 the figure for February, as testified to by Mr. Thrall
5 yesterday.

6 Q Mr. Cooper, would you refer, once again to the
7 first page, looking at the left-hand column, which reads
8 Total Day, would you refer to that and explain that, please?

9 A Yes, the figure under Total -- following the Total
10 Day column in this day part area, following the Total Day
11 figure across, you will see the number 5571, 5571 represents
12 the total number of households that viewed an average
13 telecast of the Donahue Show in November 1982.

14 Now, I might emphasize to you that this is total
15 households, cable and non-cable; however that program is
16 viewed. That is the total figure, 5,571,000 for average
17 telecast.

18 Q Now, would you turn to the second page, please?

19 A All right.

20 Q And as we go down the rankings we find Donahue
21 listed as 27?

22 A Yes, sir.

23 Q And as we go across there, would you explain what
24 the numbers mean the next to the last column, under DMAs
25 carried?

1 A Yes, what we have here under the figure projected
2 in thousands, is the number of households viewing the
3 typical Donahue program within the designated market areas
4 in which the program was broadcast. And that figure is
5 4,934,000, with an average rating in the DMA of 6.1 in
6 November of 1982.

7 Q Now, Mr. Cooper, would you relate for us, please,
8 the two numbers that you have directed our attention to,
9 the 5,571,000 and the 4,934,000?

10 A The difference between the 5,571,000 and the
11 4,934,000 which is 637,000 represents the number of house-
12 holds outside the market areas in which the station was
13 broadcast and viewed the Donahue Show, either on cable, or
14 on a broadcast basis. But they are outside the designated
15 market areas, the represent the maximum number of distant
16 signal cable households.

17 The reason I am stressing maximum is that in a
18 designated market in Chicago, there could be viewing
19 of Chicago on a live basis in nearby Wisconsin, or nearby
20 Indiana, as well as on cable. But this is that figure.
21 That is what the significance is of that.

22 Yesterday Mr. Thrall erroneously said to you that
23 the way you would account for the outside viewing would be
24 by counting up the persons viewed. Do you recall that
25 testimony? He said, for example, in this case, if you

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1 look at the figures we are dealing with here, to the figure
2 for outside would be 2,113,000.

3 Q Where do you see that?

4 A That is under women, 18-49, on the first page of
5 this exhibit, plus 2020, plus 1843. See, he is counting
6 up persons, plus 688 -- they have nothing to do with that.
7 It is absolutely irrelevant. The relevant figures are the
8 comparison between the viewing in the DMA and the total
9 viewing throughout the United States, and the data are
10 there.

11 As a matter of fact, I would just like to say once
12 more -- I have previously referenced that in one of the
13 exhibits -- Mr. Thrall used -- presented with the NTI
14 total ratings when he said that the real figures that
15 advertisers used was average ratings. Yesterday in testify-
16 ing in connection with the Donahue Show where their
17 exhibit was on the basis of total persons in daytime, he
18 said -- and the record will confirm it -- he said that
19 the persons data are not to be relied upon because they
20 are very sketchy, that the real figures to use were house -
21 holds. And the record will show that.

22 And I think that is enough on that.

23 MR. SCHEINER: The next exhibit, Exhibit 8, Viewer-
24 ship of Donahue Outside the Designated Market Areas of
25 Stations Broadcasting the Series.

1 (Whereupon, the document was marked for
2 identification as MPAA Exhibit No. 8)

3 BY MR. SCHEINER:

4 Q Would you explain this exhibit?

5 A Yes, this is an exhibit, essentially summarizing
6 for the periods of '81 and '82, measurements of the same
7 kind of materials that we just talked about for November
8 '82. As a matter of fact, if you look at the November '82
9 line, you will see exactly the figures that were contained
10 in our Exhibit 7. You will see the 4,934,000 on the
11 second page of that exhibit; the 5,571,000 on the first
12 page of Exhibit 7.

13 Q This is merely a recap.

14 A And there is the 637,000 I testified, which is
15 12.9 percent greater than the number of projected DMA
16 households. Do you see that?

17 I have shown here the figures for February 1981,
18 February '82; May '81 -- would you please correct that,
19 it should be May 1982, the second line?

20 In July '82 there was no ROSP for July '81, I am
21 not withholding anything on that; November '81, and
22 November '82. And I show all of the figures for that
23 across the board.

24 Down below I have provided you -- to simplify, the
25 averages for February, May and November, since there was

1 no July in '81, I felt it was best to exclude that. So,
2 for 1981, those three sweep periods, the projected DMA
3 households for the Donahue Show were 5,072,000; for total
4 US households it was 6,348,000 or the total was 1,276,000
5 in excess of the local viewing, or 25.2 percent.

6 In 1982, the switch from WGN to WBBM, and whatever
7 other factors are involved, the figure in the DMA was
8 4,912,000; the total was 5,522,000 and an excess of 610,000.

9 We now show the decline, the difference between
10 the '81 and the '82. Within the DMA household area, the
11 live broadcast area, if you would, the drop was 3.2
12 percent. Outside, on the total basis -- inside and outside,
13 the drop was 13 percent. Just outside the DMA the drop
14 was 52.2 percent.

15 Q I gather you consider that significant?

16 A Yes, again, from non-MPAA special studies -- the
17 Tribunal has striven to focus and to receive data on
18 distant viewing in cable households -- from the published
19 report, the non-MPAA special studies, this is the closest
20 you can come to confirmation of the kind of data that are
21 presented in the MPAA special studies.

22 MR. SCHEINER: Is there a question on this?

23 (No response)

24 MR. SCHEINER: The next exhibit, Exhibit 9, Actual
25 Frequency of Broadcast and Number of Stations Broadcasting

1 Multi-Media Series.

2 (Whereupon, the document was marked for
3 identification as MPAA Exhibit No. 9.)

4 BY MR. SCHEINER:

5 Q Would you explain this exhibit?

6 A Yes, sir, this relates back to Multi-Media Exhibit
7 6 in this proceeding. The Tribunal has over the years
8 rejected time-based formulations for claims, time alone.
9 And Multi-Media persists in presenting the Tribunal with
10 the same old time-based formulation for their consideration.
11 And Exhibit 6 this year they presented the same kind of
12 exercise.

13 What we have here is for four Multi-Media series,
14 we show from the Nielsen ROSPs, the number of stations
15 and the number of telecasts during the four weeks -- during
16 each of the four sweep periods. Multi-Media in Exhibit 6
17 has assumed that the number of stations that broadcast
18 each of the programs during February carried all of the
19 programs telecast every week during the year.

20 In other words, if a program was a weekly program,
21 they assumed that all of the stations that carried it in
22 February, carried one telecast per week for 52 weeks.

23 Q Mr. Cooper, when you said Multi-Media Exhibit 6
24 made that assumption how is that assumption reflected?

25 A It is reflected in terms of the number -- they

1 showed the number of telecasts. Let's look first at
2 Exhibit 6, the Backstage at Grand Ole Opry, on page two
3 of that exhibit. There they show 77 stations carrying it
4 a half hour per week, and they make the multiplication,
5 they come down to a 38.5 hours per week per program, which
6 is one half of 77. And then they have multiplied that on
7 page four by 52, to reach their time totals; 77 was indeed
8 the number in February. However, in February of those 77
9 stations, 66 broadcast Backstage at the Grand Ole Opry only
10 once, not four times during the four weeks; 18 broadcast
11 three episodes of Backstage, not four during the four weeks;
12 43 did broadcast Backstage once a week; one broadcast five
13 telecasts during the four week period and one telecast
14 eight of the shows -- made eight telecasts of Backstage.

15 That's what the data show.

16 If you now -- as I indicated, Multi-Media in Exhibit
17 6 says there were 1,232 half-hours.

18 Q I take it then the ROSP totals --

19 A It is 988.

20 Q And for each program, based upon ROSP data, you
21 have set out the extent of the statement in Exhibit 6, is
22 that correct?

23 A That's correct. It merely says that on a time
24 basis they have overstated the time of Backstage by 24.7
25 percent; of Pop Goes Country by 16 percent; of Nashville by

1 20 percent; and of Porter Wagoner by 39.8 percent.

2 Q And all of this is on the assumption that any
3 time showing has any relevance, a position which the
4 Tribunal has consistently rejected, is that correct?

5 A Yes, sir.

6 CHAIRMAN BRENNAN: Not quite, Mr. Scheiner, time
7 is relevant.

8 We will take a recess.

9 (Whereupon, a short recess was taken.)

10 CHAIRMAN BRENNAN: Back on the record.

11 MR. SCHEINER: I think we completed Exhibit 9.

12 COMMISSIONER AGUERO: Mr. Cooper, before we move
13 to Exhibit 10, do you think removal of station WGN to
14 WBBM is one of the causes for more audience of Mr. Donahue's
15 show? Also, you know TV is a habit and when you go home
16 and you are looking at your dial, the program you have
17 lost sometime, you know, the habit of watching one show.
18 Also, you said a little while ago, the variety show type
19 that Mr. Donahue has, also, he has a small segment of news,
20 it is timely.

21 Do you think that the quality of the show of
22 Donahue is losing the quality, or is because sometimes you
23 receive the show in your home late news?

24 THE WITNESS: No, I am saying merely, Commissioner,
25 that an interview that deals with a timely subject today,

1 may not be timely two weeks from now. Take kind of a
2 typical Donahue Show, which may be dealing with an issue
3 that Congress is considering, and may have a broadcast
4 before there is a congressional vote. And it is very
5 interesting that day, but three weeks later, after Congress
6 has voted on it and the matter is passe, it is no longer
7 is.

8 COMMISSIONER AGUERO: Do you think, Mr. Cooper,
9 that one reason Donahue moved from Chicago to New York
10 will help the show in quality and rating?

11 THE WITNESS: They have a decision to make, the
12 decision on the one hand is that there is damage to the
13 syndicator to the extent that this program is retransmitted
14 via satellite, because that cuts down on --

15 BY MR. SCHEINER:

16 Q Allen, I think that requires explanation, I really
17 do.

18 A I would just want to say, there are pluses and
19 minuses, as far as most program suppliers are concerned,
20 and most broadcast stations are concerned, there is no
21 benefit to them by virtue of the carriage of that program
22 as a distant signal in cable households. So, it may not
23 be advantageous for them.

24 COMMISSIONER AGUERO: So, you do not consider
25 Donahue Shows as a news program?

1 THE WITNESS: Do I consider it a news program?

2 Not news, I think that it is current, but that currency
3 is an important element of the Donahue Show.

4 COMMISSIONER AGUERO: In how many programs a year
5 does Donahue have news, if he has 200 shows a year, how
6 many shows does he have something to do with Congress, or
7 the abortion law, or so and so, and so and so?

8 THE WITNESS: Most of Donahue Shows deal with
9 current topics, current. And the extent to which it is
10 current is of the utmost or major significance. And the
11 extent to which it gets dated loses interest as far as
12 the public is concerned.

13 COMMISSIONER AGUERO: Thank you.

14 THE WITNESS: You are welcome.

15 MR. SCHEINER: Turn to Exhibit 10 which has been
16 distributed.

17 (Whereupon, the document was marked for
18 identification as MPAA Exhibit No. 10)

19 BY MR. SCHEINER:

20 Q Would you explain this exhibit, please?

21 A I would hope that this exhibit would once and for
22 all settle this business of the time factor. Again, we
23 are dealing here with the time factor of all Multi-Media
24 Show Biz programs versus one program, the Jim Bakker PTL
25 Club program. And this, of course, is referenced to

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1 Multi-Media Exhibit 6 on the time factor business. What
2 we have shown here is the total number of hours in four
3 weeks, the time factor for all Multi-Media Show Biz pro-
4 grams in the November 1982 Nielsen ROSP, and similar data
5 from the Arbitron Syndicated Program Analysis Report. The
6 data in the -- again, this was hurriedly done, and I
7 apologize for some errors that are in here.

8 If you will look at the material on the Arbitron
9 SPA, which is the four columns to the right, the first
10 thing where it says number of telecasts should be number
11 of stations, the number 58 that is below that, that is
12 the number of stations for that program.

13 The next column should be number of telecasts;
14 the third column should be the same as the Nielsen ROSP,
15 the duration per telecast, and then the fourth column is
16 correct.

17 Q You are just conforming these captions to the
18 Nielsen captions?

19 A Yes, sir. This was hurriedly done yesterday
20 afternoon. The same process I indicated earlier, I have
21 the stations, number of telecasts during the four weeks
22 in November, from these two sources, and for all of the
23 Multi-Media programs. From the Nielsen we have 4,186.5
24 hours in four weeks; and from Arbitron it is 4,272 hours
25 in four weeks. Strictly time, which is the factor in

1 Exhibit 6 of Multi-Media's presentation.

2 Below there I show the figures for Jim Bakker PTL
3 Club alone, one show, with a very small audience. The time
4 on the Nielsen basis for the Jim Bakker PTL Club alone
5 is 4,821 hours during the four-weeks, or about 600 plus
6 hours more than the total of all Multi-Media programming.
7 And if you will follow across to the Arbitron data, you
8 will see exactly the same situation, where the Jim Bakker
9 PTL Club alone has 600 more hours, approximately, than the
10 total for all Multi-Media programming, including several
11 specials which were not recorded --

12 Q Mr. Cooper, excuse me, but I think the record ought
13 to be very clear that Jim Bakker is not one of the
14 claimants represented by us.

15 COMMISSIONER RAY: I was going to ask if you pre-
16 pared that for the Devotional Claimants.

17 THE WITNESS: No, I prepared it in view of the
18 overlapping of the proceedings that we are dealing here
19 with. It just, again, indicates the absolutely meaningless-
20 ness of the time factor.

21 BY MR. SCHEINER:

22 Q Mr. Cooper, included in the list of Multi-Media
23 Show Biz programs is Gospel Singing Jubilee, which you
24 note is devotional. Yesterday Mr. Thrall was questioned
25 with respect to this program, and particularly as to the

1 manner in which it had been categorized by the various
2 rating services.

3 Q Could you tell us, please, how that program is
4 carried by Arbitron, Nielsen and BIB?

5 A Yes, Nielsen categorizes Gospel Singing Hour as a
6 devotional program and it is listed only in the Nielsen
7 ROSP for devotional programs. The Arbitron Company lists
8 Gospel Singing Hour in its syndicated program analysis
9 as a religious program.

10 The Broadcast Information Bureau has it as series,
11 serial and packages, a listing of programs of all syndicated
12 series, serials and packages lists Gospel Singing Hour as
13 a religious program.

14 COMMISSIONER RAY: Why isn't there any information
15 listed under Arbitron?

16 THE WITNESS: I don't understand, sir.

17 COMMISSIONER RAY: In looking at the Gospel Singing
18 Jubilee?

19 THE WITNESS: That is a good question, sir, let
20 me find out why. (Perusing documents) Incidentally, this
21 exhibit was prepared yesterday afternoon, during my
22 absence from the Tribunal. Gospel Singing Jubilee should
23 have been included with the Arbitron, it had 34 stations.
24 And I will accept -- even though it is questionable, that
25 there were four telecasts for each station and that would

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1 increase the number of hours by 68 hours, over the four-
2 week period.

3 COMMISSIONER RAY: How many telecasts?

4 THE WITNESS: Well, let's assume there were four,
5 so it would be 68 hours.

6 MR. SCHEINER: Next, Exhibit 11 bears the caption.
7 Adjustment of Nielsen Study Total Viewing Hours of
8 Syndicated Programming to 52 Week Shows, Multi-Media
9 Specials Are Properly Valued.

10 (Whereupon, the document was marked for
11 identification as MPAA Exhibit No. 11)

12 BY MR. SCHEINER:

13 Q Mr. Cooper, is this exhibit, as well, directed to
14 the Multi-Media exhibit entered yesterday?

15 A Yes, sir.

16 Q Which exhibit is it?

17 A It relates to Exhibit 10.

18 Q And what did Exhibit 10 purport to show?

19 A Exhibit 10 was presented by Multi-Media on the
20 basis that the data we have which related to 16 weeks did
21 not include all of the Multi-Media specials which were
22 aired outside of the sweep weeks. And what they have done
23 in their Exhibit 10 is to make the assumption that all of
24 -- if all of the specials had been aired during sweep weeks,
25 then it would have accounted for a larger number of

1 household viewing hours than were credited for those that
2 did appear during the sweep weeks.

3 Q How does Exhibit 11 address that position?

4 A What they didn't do on that is to assume that all
5 of the other programs were also carried during 52 weeks.
6 In other words, if we now increased or expanded the total
7 number of coverage for all coverage, not only the Multi-
8 Media specials from the 16 weeks to 52 weeks, then what
9 is the impact on the specials.

10 What we have here -- we have previously related
11 to you the count on the total number of program hours for
12 all programs picked up in the MPAA special study for 1982,
13 which was for the 16 weeks, 1,533,219,800 hours. We have
14 now expanded that to 52 weeks, using the same formula that
15 they did in Exhibit 10, and that would increase the total
16 number of hours to 4.9 billion.

17 Now, if I take the figure that Multi-Media presented
18 in Exhibit 10, which was the projection of all of their
19 series to a 52-week basis, their figure came out to
20 1,158,200. And I have now overlayed it on the 16-week
21 figure, which is what we had reported earlier, and on the
22 basis of our sample study, they came out then with less
23 than one-tenth of one percent of total household viewing
24 hours -- less than one-tenth of one percent.

25 Now, if we do the same thing -- they then came up

1 with 7,206,000 on a 52-week basis, we now made the same
2 calculation on a 52-week basis for all programs and we
3 find out that the Multi-Media specials on that basis would
4 be slightly more than one-tenth of one percent. We are
5 dealing there with minutiae. When we get down to one-
6 tenth of one percent, we are not dealing with very much.

7 MR. SCHEINER: We now have the final exhibit, No.
8 12.

9 (Whereupon, the document was marked for
10 identification as MPAA Exhibit No. 12.)

11 BY MR. SCHEINER:

12 Q And would you be good enough to explain this
13 exhibit?

14 A Yes, this Exhibit 12 shows from the statements of
15 accounts of 1982 the number of cable systems that carried
16 a station on a full-time distant signal basis. We have
17 presented this exhibit in mind with the criticism that
18 has been voiced that our sample is too small, our sample
19 for 1981 and 1982 consisted of the 89 stations that
20 were carried by the largest number of Form 3 systems on
21 a distant signal basis.

22 What we show here in Exhibit 12 is there was only
23 one station that was retransmitted as a full-time distant
24 signal of over a thousand cable systems, that was WTBS.
25 There was only station that was retransmitted as a distant

1 signal between 599 Form 3 cable systems, that's WGN. There
2 was only one station that was retransmitted between 1 and
3 499 Form 3 cable systems as a distant signal and that is
4 WOR.

5 Then we get down to all of the rest of them that
6 were carried by anything between 10 and 99 cable systems
7 as a distant signal, and the total of all of those, between
8 10 and 99 is 75. And then the total of all stations that
9 were retransmitted as a distant signal by more than 10
10 Form 3 cable systems is 78.

11 Our sample is 89 stations, we have included stations
12 that are carried by fewer than 10 Form 3 cable systems.
13 Now to go down below that, you get down to probably another
14 100-150 stations that are carried by one or two cable
15 systems only, and then you will have -- dealing with
16 commercial stations out of the 800, of approximately 400-
17 450 that aren't carried by any cable system, any Form 3
18 cable system as a distant signal.

19 The data that are available that would come from
20 expanding the sample to include stations that are re-
21 transmitted by only one, or maybe two Form 3 systems is
22 minimal. And of course, there would be no input whatso-
23 ever to include in the sample the 400-plus stations that
24 are not retransmitted as a distant signal by any Form 3
25 cable system.

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1 Q What is the cost in the Special Nielsen Study for
2 the inclusion of one station?

3 A Each station costs us \$5,000 for the data processing.

4 COMMISSIONER RAY: Is it safe to assume that the
5 cost of a special study is 89 times five?

6 THE WITNESS: It is \$.5 million.

7 COMMISSIONER RAY: What percentage of the cable
8 household -- distant signal cable household is represented
9 by the 89 stations?

10 THE WITNESS: Well over 95 percent.

11 MR. SCHEINER: I have no further questions on
12 direct.

13 CHAIRMAN BRENNAN: Are there additional questions
14 at this time by Commissioners?

15 (No response)

16 CHAIRMAN BRENNAN: If not, it would probably make
17 sense to recess at this point, until 2:00 o'clock.

18 (Whereupon, the luncheon recess was taken at 11:45
19 a.m., to reconvene at 2:00 p.m.)
20
21
22
23
24
25

AFTERNOON SESSION

(2:10 p.m.)

CHAIRMAN BRENNAN: The hearing will resume.

Mr. Lutzker.

CROSS-EXAMINATION

BY MR. LUTZKER:

Q Allen, I would like to start this afternoon by trying to get, first, the big picture and then narrowing a little bit. In past years MPAA has introduced in Phase I a Nielsen research report of which this is a copy, Exhibit A, in the 1980 proceeding. My assumption is at this point that when you refer to a Nielsen Study, Nielsen has done the same thing as it did in 1980, and 1981 for you as it was done now in 1982, is that correct?

A Essentially the same, yes.

Q And is this a document that you will put in the record in this proceeding?

A No, sir.

Q In looking at what -- if I rely upon this as a format, it would be roughly the same as what Nielsen produced for you in the 1982 proceeding?

A Yes, sir.

Q In looking at this -- let me also get some additional background. You have 89 stations that are samples -- you use 89 stations in the sample for which

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1 Nielsen produces this information?

2 A The Nielsen Study is based upon the distant signal
3 viewing of 89 stations.

4 Q And are those the same 89 as were used in last
5 year's?

6 A No, sir. Are you talking about 1981?

7 Q 1981.

8 A No, there have been changes in the particular
9 identification of the stations relating to their carriage
10 of the distant signals.

11 Q Can you supply that for the record -- unless it
12 is just a couple and you want to read them off?

13 A Let's see if I have them. I think I have it here.
14 Yes, the stations that were new in 89, you want -- shall
15 I just read them to you?

16 There are 13 that were new in 1982's study.

17 Q If you want to read it, or just provide it for
18 the record?

19 A Well, I will read it off, I will just give you
20 the call letters and you can follow up from that point on,
21 WCVB, WMER, WIVB, WKBW, WPCQ, WDBM, WTVN, KXAS, WTNH,
22 WJAC, WZTV, WCBS, and KSMP.

23 Q Was WBBM added on the basis of the standards
24 applied in the past?

25 A It was applied on the standards that we used to

1 select the sample in 1982.

2 Q What is the basis for that?

3 A The basis of inclusion of a station sampled for
4 1982 was that it would have 200,000 distant -- 200,000
5 subscribers of Form 3 cable systems that carried it on a
6 full-time basis during both -- the total during the first
7 and second accounting period of which a minimum was 100,000
8 in the second accounting period.

9 Q Now, this is a list of stations that MPAA selects
10 based on that criteria?

11 A Yes, sir.

12 Q You then supply that station list to Nielsen?

13 A Yes, sir.

14 Q And what do they do?

15 A We supply the station list to Nielsen and we also
16 supply one other important item of information in connection
17 with each of the stations, and that is the designation of
18 the areas in which it is a local and in which it is distant.

19 Q And that allows Nielsen then to identify in their
20 catalogue distant signal -- additional distant signal
21 carriage?

22 A Right. And Nielsen then examines their data for
23 the totality of the 400,000 approximate diaries that they
24 collect during these 16 sweep weeks, of which approximately
25 125,000 cable households, and segregates for each station

1 the households in which the particular signal which we are
2 interested in was distant.

3 Q Now, let me just go back over those numbers. In
4 the past years we have indicated that the in tab, or
5 usable diaries are approximately half of the ones that
6 Nielsen would send out, on an annual basis?

7 A That's correct.

8 Q So, in 1982, there would have been approximately
9 800,000 diaries mailed out, 400,000 are received back;
10 and they are either --perhaps slightly more than that are
11 received back and some are disgarded?

12 A They are examined and some of them are not usable,
13 they are rejected.

14 Q But approximately 400,000 are deemed usable by
15 Nielsen; of the 400,000 approximately 125,000 or 35
16 percent are cable diaries?

17 A That's correct.

18 Q Nielsen measures four sweep periods and four weeks
19 in each sweep period?

20 A The data that we used for 1982, is based upon four
21 full week periods.

22 Q So, if you took the 125,000 diaries, you would have
23 approximately 31,000 diaries a sweep, and on a weekly
24 basis, that would be about 7500 diaries?

25 A That's correct.

1 Q Each week a new set of diary keepers are selected,
2 isn't that correct?

3 A That's correct.

4 Q So, someone has a diary for a week, and that ends
5 their responsibility. And as Multi-Media has introduced
6 a sample diary into the record last year, and that would
7 be the diary that would be used by Nielsen?

8 A Essentially the same.

9 Q In 1982, do you have any idea as to how many
10 cable systems there were in the United States?

11 A Between 5,000 and 5500.

12 Q Between 5,000 and 5500; there are 7500 diaries
13 that are accounting for viewership on 5,000 cable systems?

14 A Accounting for the viewership on 5,000 cable
15 systems in 1982, by approximately 30 million households.

16 Q If you did a rough relationship, one diary would
17 represent, on an average, how many households?

18 A One diary? Well, during a week, if we are dealing
19 with --

20 Q On a weekly basis?

21 A Probably 50,000 or thereabouts.

22 Q 50,000 homes. In other words, a single diary
23 would account for viewership on 50,000 homes?

24 A Probably, somewhere in that neighborhood.

25 Q And Nielsen is collecting all of this information

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1 for television ratings purposes and publishing the ROSP
2 summaries which are relied upon by companies --

3 A Yes, they publish other things, besides ROSPs
4 based on it, principally, the individual market reports
5 which are called Viewers in Profile. And these are a
6 complete report for each market, for each station in the
7 market and shows the viewing to each station and the
8 demographics for each program.

9 Q Going back, in past years we have talked about
10 weighting of diaries and samples. And if I understand
11 what you are saying, on an average a single diary might
12 be weighted to represent -- a single cable diary might
13 be weighted to represent approximately 50,000 homes?

14 A That is not an unreasonable number, but I have
15 no precise number.

16 Q Now, when Nielsen produces a special report --
17 and I am relying upon this one that you say is typical --
18 they have a summary, and I assume the same kind of summary
19 -- I will just take the first entry for KABC, and there
20 is a column that -- let me share this with you, so we
21 can read along. There are two entries per column, the
22 top column is programming in quarter hours and a number,
23 and then a viewing average household in thousands. And
24 if we look under the item for syndicated series, you would
25 have quarter hours of programming and viewing average

1 households in thousands.

2 A This is for one month.

3 Q This is for the February 1980 period, but the
4 information you receive is roughly the same. In this
5 case, KABC had 98 quarter hours of syndicated programming
6 and viewing average households of 9,000 per quarter hour.
7 In other words, 9,000 households on an average viewed the
8 98 quarter hours?

9 A That is 9,000 households viewed each quarter hour
10 as a distant signal in cable households; 9,000 cable
11 households.

12 Q Do you have the figures for 1982 for WTBS, WGN
13 and WOR with respect to -- and let's just take February
14 as an example -- the quarter hours and the average house-
15 holds in thousands?

16 A I must consult with counsel in terms of the
17 Settling Parties consideration.

18 (Whereupon, the witness conferred with counsel
19 off the record)

20 MR. SCHEINER: I am concerned divulging this
21 information may be inconsistent, or contrary to agreements
22 entered into by the Settling Parties with respect to the
23 disclosure of Nielsen data.

24 CHAIRMAN BRENNAN: Off the record.

25 MR. LUTZKER: For the 1982 Nielsen Study, the

1 syndicated series quarter-hours programming and viewing,
2 average households, as has been provided in previous years
3 for WOR-TV, WTBS-TV and WGN-TV. And if I may, WBBM-TV.

4 CHAIRMAN BRENNAN: And you are representing to the
5 Tribunal that the information being requested has been
6 furnished in previous years?

7 MR. LUTZKER: Well, in the 1980 proceeding WBBM
8 may not have been part of this proceeding, but WOR, WGN
9 and WTBS were most certainly part of the Nielsen Study.

10 MR. SCHEINER: May I ask the purpose of this
11 inquiry?

12 MR. LUTZKER: You will see. The purpose is highly
13 relevant to everything that I will pursue this afternoon.

14 MR. SCHEINER: I am sure you think so, but can you
15 tell me what it is relevant with?

16 MR. LUTZKER: The relevance is in determining how
17 you arrive at specific household averages for programming
18 that you are purporting to represent, and that I am purport-
19 ing to represent, and do represent.

20 MR. SCHEINER: As I indicated, I do have a question
21 as to whether disclosure of such detailed data is consistent
22 with the understanding of the Settling Parties. And let
23 me take two minutes to talk to the witness.

24 (Discussion off the record.)

25 MR. SCHEINER: I have no concern about what the

1 data might show. I continue to have a concern about the
2 agreement among the Settling Parties, and if the Chair
3 would direct us to furnish the material, I would be happy
4 to exceed to such a direction, or request.

5 CHAIRMAN BRENNAN: The Chair believes that the
6 Tribunal would find this information helpful and relevant
7 to this proceeding.

8 THE WITNESS: I have a special report prepared for
9 the Motion Picture Association of America, issued January
10 20th, 1984, which deals with a 1983 study.

11 Do you want the figure for the four weeks combined,
12 or what do you want?

13 BY MR. LUTZKER:

14 Q Well, if you can give me for the four quarters,
15 combined.

16 A Yes, a four cycle summary.

17 Q All right, let me see what that looks like, and
18 then we will see about anything else.

19 A WBBM had 2,541 quarter-hours of non-network program-
20 ming; and the average household viewing for quarter-hour
21 was one, meaning one thousand on a rounded basis. Syndicated
22 series was 890 quarter-hours, or 35 percent; the average
23 viewing was 2,000.

24 Q So that is a two?

25 A That's a two, and the syndicated series represented

1 35 percent of the program quarter-hours on WBBM, 51 percent
2 of the viewing hours.

3 Non-network movies was 357 quarter-hours, or 14
4 percent; one, again, the rounded number one for the view-
5 ing, 14 percent -- in both cases 14 percent of the program-
6 ming and 14 percent of the viewing.

7 Q The first non-network --

8 A 2,541. That is the basis for the 890.

9 Q Oh, that is the sum of those two?

10 A No, it is the sum of all non-network programming.

11 I will now give you two more sets of figures, the
12 combination of syndicated series and movies was 1,247
13 quarter-hours or 49 percent of the total; the viewing is
14 a two, 65 percent of the viewing was for syndicated series
15 and movies on that stations. All other programs are the
16 balance of that, that's 1,294 quarter-hours.

17 Do you want WGN?

18 Q Okay.

19 A 8,694 quarter-hours.

20 Q 8,694?

21 A Right, 116 average; syndicated series 4677; 129
22 viewing; non-network movies, 2374; and 107 viewing; the
23 combination of syndicated series and movies is 7051, or
24 81 percent of the total. And the viewing is 121, or 85
25 percent of the total.

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1 WOR will be next, 8,589 quarter-hours; 49 viewing,
2 3,205 quarter-hours of series, 62 viewing; 2,009 movies,
3 65. The total is 5,214 or 61 percent of the quarter-hours,
4 63, or 79 percent of the viewing.

5 Q For all other, you are not reading those?

6 A That is 3,375 and 26.

7 Q And for WGN?

8 A WGN the balance was 1643; and 95.

9 Q WTBS, 8748 quarter-hours, 278 viewing, 3201 series,
10 313; 3779 movies; 251; 6,980, or 80 percent of the time
11 syndicated series and movies, and 280, or 80 percent of
12 the viewing for syndicated series and movies.

13 Q And the balance?

14 A 1768, and 273.

15 Q Now, Nielsen provides you with this report and
16 provides average hours and summary?

17 A What Nielsen provides us with is a computer tape
18 which contains -- this is summarized rounded information,
19 the computer tape contains specific data for each program
20 in unrounded form.

21 Q Now, for each program does Nielsen summarize, using
22 the average quarter-hour -- excuse me, average viewing
23 hour figure for a program, or does it summarize actual
24 viewing hours?

25 A For the purposes of exhibits which we have presented,

1 where we are using unrounded numbers, we are basing that
2 upon data from the computer tape. The data that is pub-
3 lished by Nielsen that we have made available in prior
4 years, is the rounded number for each program on each
5 station.

6 Q Let me ask -- say a program appears on WOR and
7 WBBM, and say it is a movie, and under the Nielsen Study
8 you indicated movies, in an average household viewing of
9 107,000 on WGN and the other, I believe it was one. Now,
10 the combined average is 108, if the movie ran once during
11 the year and it appeared only on WBBM and only on WGN,
12 and it was covered in your sweep, the combined average
13 would be 108?

14 A If you were to do such a foolish thing, my dear
15 friend, this is what you would get.

16 Q When Nielsen provides you information, do they
17 provide you the 108 figure, or do they provide you
18 different information?

19 A They provide us with a different figure for each
20 broadcast of each program, on each station. Each broadcast,
21 each station.

22 Q So the figures that Nielsen provides you are not
23 average figures for programming appearing on a station,
24 they are specific program figures that appear on the
25 station?

1 A Exactly, absolutely specific for each program on
2 each station, each broadcast.

3 Q And that is what I expected. Now, who computes
4 the summary data, as appears in your Exhibit No. 2? This
5 is the listing of the 228 stations which shows 41 million --

6 A That tabulation is done for us by an organization
7 owned by Tom Larson, called Cable Data Corporation,

8 Q And they are using the Nielsen tapes?

9 A Exactly.

10 Q Nielsen doesn't tabulate this themselves then?

11 A These totals are tabulated by MPAA's agent.

12 Q Is there a reason why Nielsen doesn't tabulate them?

13 A I think in our negotiations with them, it would
14 be less expensive to have them done by Cable Data
15 Corporation, you are using their material and you can't
16 fudge around with them.

17 Q Does Nielsen give you any error factor when it
18 provides the computer tapes?

19 A They have not. The reason that we don't have an
20 error factor is that we are not dealing with ratings, we
21 are not dealing with shares, we are dealing here with a
22 completely -- with a total by-product of their audience
23 measurement survey, and the error factors and probabilities,
24 standards and so forth that are expressed for ratings and
25 shares do not apply here.

1 I have gone over this, you know, for so many years
2 now and I have indicated that my skepticism in any event,
3 with respect to the measurement of probable error, all
4 of these measurements, the statistical measurements start
5 out with one assumption, which is never realized, that
6 assumption is a perfect sample. A perfect sample means that
7 every one that you had selected on strictly a probability
8 basis had fulfilled all of their obligations and were
9 included in the sample. As soon as you vary from that,
10 the statistical measures of probability -- the probability
11 error measures are meaningless.

12 Q And you have stated that in past proceedings?

13 A Over and over again.

14 Q And you have also stated that you don't know how
15 to judge the error factor of a study of this sort?

16 A I agree with that. I say that I accept these
17 figures to the same extent that Mr. Thrall said yesterday
18 the whole advertising fraternity or the whole broadcasting
19 fraternity accepts the figures, knowing that they have
20 deficiencies because from all of the critical reviews that
21 have been made of this system, they have always proved
22 out to do precisely what they have said they were doing,
23 and as accurately as they know how to do it.

24 Q Was Mr. Thrall referring to the cable study that
25 Nielsen produced for MPAA, or was he referring to the

1 Nielsen rating study?

2 A He was referring to the Nielsen rating report.

3 Q And in the Nielsen rating report, do they provide
4 statistical error information so that one can judge the
5 reliability factor of the data submitted?

6 A They provide data that could be used by people who
7 have credence in that information, who care to know that
8 information.

9 Q Do I interpret your answer to be yes?

10 A My answer is that they provide information, and
11 my answer also is that the information is ignored by the
12 people who spend billions of dollars for advertising or
13 who are responsible for the programming of 900 commercial
14 television stations in the United States.

15 Q Is it ignored because they consider the information
16 reliable?

17 A It is ignored because they consider the material
18 furnished by Nielsen to be reliable, yes.

19 Q And does Nielsen provide statistical summaries
20 for statisticians who are PhDs to go through the material
21 and say, when I am talking about a six rating, and 5 million
22 households, I know what that information means within a
23 range, and I can rely upon that data? Is that what Nielsen
24 does for its summaries?

25 It is a yes or no question.

1 A It is not anyes or no question, because when
2 Nielsen provides these data, they put the caveat in that
3 I have just expressed to the Tribunal, and that caveat
4 is that these error factors apply to a perfect sample.
5 And Nielsen then says, our samples are not a perfect
6 probability sample. And so use these with caution.

7 Q Do they provide any comparable cautionary informa-
8 tion with respect to your sample?

9 MR. SCHEINER: Excuse me, it may not be information
10 that you are aware of, and indeed it might be helpful in
11 rounding out --

12 MR. LUTZKER: Well, I will ask my question.

13 MR. SCHEINER: Will you let me finish?

14 MR. LUTZKER: Finish.

15 MR. SCHEINER: It might be helpful in rounding out
16 this record and bringing the commissioners current with the
17 thrust of your questions.

18 CHAIRMAN BRENNAN: If you feel that way, Mr. Scheiner,
19 I am sure you can pursue that on redirect.

20 BY MR. LUTZKER:

21 Q Mr. Cooper, are there comparable explanatory
22 qualifications that will enable statisticians who care
23 about it, to make judgments on the reliability of this
24 information?

25 A No.

1 Q Thank you.

2 MR. LUTZKER: At this point I would like to show
3 you an article, mark this as Exhibit No. 12 for Multi-
4 Media.

5 (Whereupon, the document was marked for
6 identification as Multi-Media No. 12.)

7 BY MR. LUTZKER:

8 Q Mr. Cooper, I will give you a second to take a
9 look at this.

10 A (Perusing document)

11 Q Are you familiar with the criticism of the Nielsen
12 cable projections that are addressed in this article?

13 A The criticism of the cable projects, both Nielsen
14 and Arbitron.

15 Q So, this doesn't come as a surprise to you?

16 A Not at all.

17 Q In utilizing Nielsen data, did you discuss the
18 nature of the cable universe?

19 A The element or the area of controversy is dealt
20 with in your Exhibit 12 relates to the count on the total
21 number of households that are able to receive cable
22 television. There are variances between various sources
23 as to the number of households that are able to receive
24 cable programming.

25 As this article points out, there are an enormous

1 number of places where these discrepancies occur. For
2 example, it references the people are stealing cable tele-
3 vision, it also deals with SMAKTV (phonetic) which is the
4 apartment house, multiple dwelling type of activities, and
5 other ways that people are receiving cable television
6 service.

7 I don't think this in anyway deals with, or has
8 any criticism of the Nielsen audience measurement system,
9 it deals only with the question as to whether or not Nielsen
10 possibly over-stating or is under-stating the total number
11 of cable system subscribers.

12 Q To the extent that you are using Nielsen data to
13 project specific viewing on cable, and if there is an over-
14 statement by inclusion of non-cable subscribers within a
15 cable count, and you are projecting specific program totals,
16 could not such inclusions distort specific results?

17 A No, sir. All that we are dealing with as far as
18 our study is concerned, is the identification of each diary
19 as being filled out by a household subscribing to cable
20 systems.

21 Q And if a diary -- we were discussing averages
22 before and one diary might stand for 50,000 homes, in
23 reality one diary might stand -- in actuality one diary
24 might equal 5,000 homes in one case and 47,312 in another
25 case. It goes across the whole range, as far as how

1 Nielsen actually computes the figures, isn't that correct?

2 A Are you talking about a weighting per diary?

3 Q The weighting per diary, yes.

4 A Yes, I think there is a weighting per diary. Again,
5 the same rating system that Nielsen applies to all of its
6 audience measurement figures for every community.

7 Q Let's assume that there are a million pirates in
8 this world and SMAKTVs and the like, and they all reside
9 in five different communities -- let's say counties. And
10 Nielsen is counting these people in their cable study.
11 They have diary keepers, and we don't even know if one of
12 the diary keepers might be a pirate, but let's put that
13 question aside -- they have diary keepers in a particular
14 county and those diaries are being weighted to effect the
15 universe that Nielsen attributes to that particular county.

16 A In that county?

17 Q In that county. Further, when you deal with
18 specific programs and viewing hours, you just said before
19 you don't deal with average numbers, you deal with actual
20 numbers. So, if somebody is watching the show and their
21 diary is projected outward to represent their little
22 universe in a county, that is going to have -- that weighted
23 factor is going to increase the value of that program, if
24 it is a larger sample size, than if it is a smaller projection.

25 A Oh, I think that is true, I think, for example,

1 contrary to some testimony that was given by a previous
2 witness, the notion that Nielsen has the same number of
3 diaries in every county in the United States is ridiculous.
4 The number of diaries placed varies, there are more in the
5 large markets than there are in the small markets. They
6 place as many diaries as is required to achieve what they
7 consider to be a reasonable return, basis for making the
8 calculations for that area. They are projections, they
9 are projected figures.

10 Q And to the extent that they distort the cable
11 universe, as regards specific programs, that distortion
12 will follow through in your sample?

13 A Yes, it probably would distort the figures for
14 all of the program that were recorded by that cable house-
15 hold.

16 Q You are making an assumption on that order is --

17 A What you are suggesting is that somehow that
18 cable household is an invalid household. And so it would
19 apply to all programs that were listed or reported as
20 being viewed as distant signals by that cable household.

21 Q And you will recall that in prior proceedings
22 there have been a number of criticisms made of the Nielsen
23 system for measuring cable. There were articles in Cable
24 Advertising Journal and the like, which produced reports
25 on the reliability.

1 Did anything happen in 1982, other than their
2 increasing the size of the cable universe, in terms of
3 their changing methodology of getting a handle on cable
4 households?

5 A No, the only change that they are referring to
6 here is that previously they were relying to a substantial
7 degree upon cable system operators to give them the number
8 of subscribers to their system. And they found that cable
9 system operators lied to them, just like they lie in their
10 statements of accounts that they supply to the Copyright
11 Office.

12 Q Excuse me, Mr. Cooper, you said that you were
13 relying upon statements --

14 CHAIRMAN BRENNAN: Mr. Cooper, do you want to leave
15 that in this record?

16 THE WITNESS: I told that to them.

17 BY MR. LUTZKER:

18 Q And these are the same statements of account
19 summaries that you brought this morning, on some of these
20 figures?

21 A Absolutely, these are sworn statements of accounts,
22 subject to criminal penalties for falsification.

23 Q And it is your respected opinion that cable systems
24 are lying in those reports?

25 A Many cable systems are lying in those reports, in

1 order to understate the copyright royalty liabilities.

2 Q I will get back to that in a little while.

3 CHAIRMAN BRENNAN: Off the record.

4 (Discussion off the record.)

5 BY MR. LUTZKER:

6 Q Okay, let's turn to Exhibit No. 1, your Exhibit No.
7 1.

8 A (Perusing documents)

9 Q Allen, your memory is of great reknown in this
10 Tribunal and I may test it -- do you have comparable
11 figures for cable viewing of Donahue on WGN in 1979, 1980,
12 and 1981 -- oh, you have 1981 -- 1979 and 1980?

13 A Pardon me?

14 Q Do you have comparable figures?

15 A Yes.

16 Q They exist, and you can supply them for the record?

17 A Yes, I can supply those for the record.

18 Q This morning you were talking about the growth of
19 WGN on cable, do you have any idea how many cable systems
20 carried WGN in 1978?

21 A I would not even venture a guess. I would say
22 the number in 1978 -- it would depend upon --

23 MR. SCHEINER: Are you about to venture a guess,
24 Allen?

25 THE WITNESS: No, I was about to say, I don't know

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1 when they went on satellite. And I don't recall that
2 precisely. And that would make a big difference as to the
3 number of cable systems that carried WGN.

4 Q Do you have any idea how many might have carried
5 them in 1979?

6 A Again, I would not guess.

7 Q Yesterday we actually submitted exhibits regarding
8 FCC statistics, and they are a government agency -- and
9 the FCC statistics that were submitted indicated approxi-
10 mately one million-plus cable systems --

11 A They did not.

12 Q Excuse me, a million-plus subscribers on -- let
13 me get the statistics here --

14 MR. SCHEINER: Would you like to explain your
15 answer, Mr. Cooper?

16 MR. LUTZKER: Let me just mention the statistics,
17 and then we can have his answer. According to FCC authori-
18 zation for the 1979 -- May 14th, 1979, 1,700 communities
19 serving approximately 1.2 million subscribers received the
20 WGN signal.

21 THE WITNESS: No, sir, that's not what it says.

22 BY MR. LUTZKER:

23 Q Would you explain what it says?

24 A Yes, I think you advised us at the beginning that
25 these were authorization notices, these are requests by

1 cable systems to carry a retransmitted television station's
2 signal that are filed with the FCC.

3 Q So you would expect the actual carriage to be
4 less than this?

5 A Well, they are an authorization request, and they
6 may subsequently be carried, or not carried. The second
7 item of difficulty with that tabulation is the fact that
8 when you refer to these as cable systems, that is an
9 erroneous statement, these are individual communities.
10 The number of cable systems is undoubtedly a much smaller
11 number than the number of communities, because each cable
12 system may serve 20, 30, 40 different communities, each
13 of which would be listed separately in the FCC authori-
14 zation request.

15 Q I thank you for the clarification. Now, are you
16 also familiar with FCC distribution reports?

17 A I don't think so.

18 Q You are not familiar with --

19 A Not by that name.

20 Q Well, the authorization reports, as you stated, are
21 systems that are authorized to carry signals and distri-
22 bution reports are tabulations respecting carriage of
23 signals.

24 MR. SCHEINER: Do you have any particular report?

25 MR. LUTZKER: I have a particular report.

1 MR. SCHEINER: Could you make that available to
2 us?

3 MR. LUTZKER: This is a report dated October 27,
4 1981, and it was obtained from the records of the FCC, as
5 representing signal carriage in 1979 for WGN.

6 MR. SCHEINER: I would object to it. The 1981
7 report reflecting carriage of signals in 1979, its pertinence
8 to this proceeding, dealing with 1982, is so remote that
9 I don't think we ought to be spending time on it, whether
10 or not it, in fact, reports what counsel believes it
11 reports.

12 CHAIRMAN BRENNAN: Would you respond to Mr. Scheiner?

13 MR. LUTZKER: I will respond briefly. The funda-
14 mental issue before the Tribunal -- one of the fundamental
15 issues before them is what is the impact of the Donahue
16 program going off WGN. It is Multi-Media's position that
17 it never received the benefit, in terms of the substantial
18 increase in carriage that GN experienced between 1979 and
19 1981, that it felt was appropriate in the wide distribution
20 of that signal, via satellite distribution. And, therefore,
21 when you are dealing with the 1982 distribution, if you
22 are looking at substantial change with respect -- 1982,
23 you must take that into account.

24 And what I am attempting to do, if Mr. Cooper is
25 critical of the authorization reports, then I will put the

1 distribution information on the record, and allow him to
2 comment on that.

3 MR. SCHEINER: May I be heard briefly?

4 CHAIRMAN BRENNAN: I don't think it would serve a
5 useful purpose. The objection is overruled.

6 MR. SCHEINER: May I see that report?

7 MR. LUTZKER: I can make copies available.

8 MR. SCHEINER: Do you expect to spend any time with
9 this?

10 MR. LUTZKER: I just want to get some information.

11 MR. SCHEINER: Let us examine these.

12 CHAIRMAN BRENNAN: We will take our recess at this
13 point.

14 (Whereupon, a short recess was taken.)

15 CHAIRMAN BRENNAN: The hearing will resume.

16 BY MR. LUTZKER:

17 Q I think I will start by just reading some figures
18 in, and you may have disagreement about this, but I will
19 just get them in. According to FCC distribution reports
20 for 1979, WGN had approximately 2.8 million subscribers
21 and approximately 9 million subscribers in 1981.

22 MR. SCHEINER: How many, please?

23 MR. LUTZKER: 9 million.

24 MR. SCHEINER: 9 million in '81.

25 MR. LUTZKER: Approximately.

1 BY MR. LUTZKER:

2 Q And these figures differ somewhat from your pro-
3 jections this morning, based on standard statements of
4 accounts, I gather, correct?

5 A They do differ substantially. Let me try -- again,
6 if I may address myself to these FCC figures. Number one,
7 they include local, as well as--authorization for local,
8 as well as distant carriage, you can see that.

9 Q Yes.

10 A Number two, when you are dealing with a listing
11 of both the authorization report and this second report
12 that you referred to, it is garbage with respect to the
13 number of communities included in that record, because,
14 again, you have multiple listings of communities -- if
15 you look at it, you can see that.

16 The third thing is I haven't the slightest idea,
17 and I have deep distrust of both the FCC's accounting
18 system, if you will forgive me, I am hard on everybody
19 today -- and also on the data with respect to subscribers
20 which I believe on the surface -- by my superficial
21 examination of what you have presented -- are duplicated
22 and overlapping.

23 Q Let me try to deal with the bigger picture. Is it
24 not true that during the period 1979 to 1981, WGN in
25 particular, experienced a dramatic increase in the number

1 of subscribers viewing its signal on a distant basis due
2 to its satellite retransmission --

3 A Yes, sir.

4 Q Have you during the past years reviewed the
5 decisions of the Copyright Tribunal with respect to Phase
6 II proceedings?

7 A I have.

8 Q Can you point to -- are you aware of Multi-Media's
9 award during 1979, 1980 and 1981 from the Tribunal?

10 A Are you referring to the 1.6 percent of the
11 program suppliers' award?

12 Q Yes.

13 A Yes.

14 Q Can you point to any defined change in the award
15 made to Multi-Media as a result of the dramatic increase
16 in distant signal retransmission of WGN?

17 MR. SCHEINER: I object, I don't think this is
18 the appropriate time, or proceeding in which to attempt
19 to relitigate the validity or correctness of the Tribunal's
20 prior decisions.

21 MR. LUTZKER: I respectfully submit, I am not
22 asking for him to relitigate, I am asking him to --

23 CHAIRMAN BRENNAN: The objection is overruled.

24 THE WITNESS: I think there are references in the
25 Tribunal's reports on Phase II to this argument presented

1 by Multi-Media. I think also that the principal thing
2 that the Tribunal has considered in its decision, were
3 other changes involving Multi-Media, and the fact that
4 the extent to which Multi-Media benefitted by the retrans-
5 mission or the increased retransmission of WGN, so did
6 every other program supplier and syndicator who had pro-
7 grams on that station.

8 CHAIRMAN BRENNAN: Excuse me, Mr. Lutzker, what do
9 you mean by other changes relating to Multi-Media?

10 THE WITNESS: I am referring particularly, for
11 example, in one year of the years that we are discussing,
12 there was an increase in their claimed programs involving
13 Show Biz. On the other hand, in terms of offsetting
14 those things, were declines in the popularity and viewing
15 of other programs that were continuing series.

16 CHAIRMAN BRENNAN: I won't rehash the Show Biz
17 issue right now. Go ahead.

18 BY MR. LUTZKER:

19 Q You have questioned the accuracy of certain
20 information, the authorization report which indicates for
21 1979, 1.2 million subscribers authorized to receive the
22 WGN signal. You have criticized the accuracy of that?

23 A Yes, 1.2 if you are a cable systems.

24 Q Yes, --

25 A Subscribers of cable systems authorized, the

1 subscribers were not authorized.

2 Q Is it your opinion, with what you know about those
3 reports, that the figure of authorizations would exceed
4 the number of actual viewers?

5 MR. SCHEINER: Viewers of what?

6 MR. LUTZKER: Total viewers of WGN. We are dealing
7 with respect to the 1979 authorization report.

8 THE WITNESS: Viewers of WGN include broadcast
9 viewers and cable viewers, and the cable viewers are local
10 signal viewers and distant signal viewers. What is the
11 question?

12 BY MR. LUTZKER:

13 Q The question is with respect to the information
14 on the authorization report, which is 1.2 million sub-
15 scribers, is it your testimony that this figures, that
16 the number of total cable subscribers -- let's not try
17 to separate out distant and local -- but that total sub-
18 scribers would be less than that figure?

19 A I would say that not all of the cable systems that
20 are listed here, that applied for authorization, carried --
21 actually carried WGN, the number has got to be smaller than
22 the number that is shown there.

23 Q So, commencing in the 1979 year, you didn't want
24 to hazard a guess before, but in view of that information,
25 is it reasonable to expect that you had less than a million

1 total cable subscribers of WGN?

2 A I don't know.

3 Q In past proceedings, have you not argued the wide
4 off-the-air availability of the Donahue Show should dis-
5 count significantly Multi-Media's claim for benefit,
6 based on GN carriage?

7 A Yes, I said in previous proceedings that the more
8 programs available on -- as a broadcast program, the
9 less valuable it is, all other things being equal, as a
10 distant signal on cable systems.

11 Q Do you have any idea how many cable diaries would
12 be reflected in Nielsen studies, with respect to WBBM?

13 A I don't know.

14 Q Would your answer be the same with respect to WGN?

15 A Yes, sir.

16 Q Is that information you can obtain and provide for
17 the record?

18 A It is information I probably cannot obtain, and
19 therefore, provide for the record, and I don't care.

20 Q Let's turn to Exhibit No. 2.

21 A (Perusing document)

22 Q You have stated this morning that this is a partial
23 list of the MPAA programming, and that in the interest of
24 not cutting down trees, you preferred not to supply the
25 rest. Recognizing that trees must bear some burden in CRT

1 proceedings, we have provided the balance of the MPAA pro-
2 gramming.

3 MR. SCHEINER: If that is a question addressed to
4 counsel, the answer is negative.

5 BY MR. LUTZKER:

6 Q Are you prepared to rest the MPAA Phase II case
7 on the presentation of these 228 programs?

8 MR. SCHEINER: I object, that will be spelled out
9 in detail in the proposed findings. The matter is on the
10 record that we are placing our reliance on.

11 CHAIRMAN BRENNAN: I think the words "rest the
12 case" are troublesome.

13 BY MR. LUTZKER:

14 Q I did a quick total -- and this is just a guessti-
15 mate -- adding up all these viewing hours and I come up
16 with about a billion. And I note in your list on Exhibit 3
17 that you have a total MPAA represented claimants of 1.5
18 billion hours of viewing. Therefore, this would constitute
19 approximately two-thirds of the programs?

20 A Oh, no, this would constitute probably 10 percent
21 of the programs.

22 Q 10 percent of the programs?

23 A At most.

24 Q But two-thirds of the claim of MPAA represented
25 claimants?

1 A That's correct.

2 Q And you will not provide -- counsel can say what
3 he wants -- you will not provide any other information --

4 MR. SCHEINER: I'm sorry, counsel has already
5 answered that.

6 MR. LUTZKER: The question was directed to the
7 witness.

8 MR. SCHEINER: The question is very late. If
9 counsel had any desire for such information, it should
10 have been made well prior to this time. He has had this
11 material for a good seven weeks.

12 MR. LUTZKER: I will place my request for 1983
13 right now.

14 MR. SCHEINER: Will you share our cost?

15 MR. LUTZKER: I will get to that in a little while,
16 Allen.

17 BY MR. LUTZKER:

18 Q Let's turn to page one, of the first 42 programs,
19 how many of those programs would you say deal -- how many
20 were broadcast live in 1982?

21 A I don't think any of these is a live program.

22 Q How many of these programs would you say are news-
23 related?

24 A None.

25 Q How many stations broadcast M*A*S*H in 1982?

1 A The number of stations that broadcast M*A*S*H?

2 Q Yes.

3 A I think the number was something like 190, probably
4 190 in February.

5 Q And what percent of the US is covered by that?

6 A Probably 98 percent. (Perusing document) In
7 November 1982, according to Nielsen ROSP, M*A*S*H was
8 syndicated and broadcast by 185 stations covering 94
9 percent of US households.

10 Q Would any of those stations broadcast it more
11 than once during the day?

12 A Do they broadcast M*A*S*H more than once during
13 the broadcast day? Yes, they did. As a matter of fact,
14 the average number of M*A*S*H broadcasts per station per
15 week was 6.8.

16 Q Would you reflect upon the value to cable operators
17 of programming which is broadcast in excess of one time
18 a day, reaching approximately 95 percent of the United
19 States? Before you answer that, how many total episodes
20 are there in the M*A*S*H series?

21 A I believe there were some 600. I think the number
22 is given in the ROSP.--242 were in syndication.

23 Q 242 episodes in syndication in 1982, broadcast
24 approximately seven times a week?

25 A Seven times a week per station, seven telecasts per

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1 week.

2 Q Seven telecasts, daily per station?

3 A No, I didn't say daily.

4 Q So they might not broadcast on Sunday? But in
5 other words --

6 A In any event it is not seven daily, it would be
7 one daily.

8 Q If I said seven daily, I was getting ahead of
9 myself. You would please comment upon the value to cable
10 operators of a program which is available on more than
11 185 stations, were you saying -- broadcast once a day,
12 at least, serving 95 percent of the United States, with
13 240 episodes, roughly? So, within the course of a year
14 each episode, presumably, is going to be repeated.

15 Would you comment on the value to cable operators
16 of that program?

17 A I think the value to cable operators is related
18 to the interest and desire on the part of viewers to see
19 M*A*S*H, the syndicated episodes of M*A*S*H. And all of
20 the evidence that we have seen indicates that viewers,
21 television viewers are very interested in seeing and
22 reviewing these syndicated off-network episodes of M*A*S*H.
23 During all of 1982, M*A*S*H was the number one program,
24 number one syndicated program with respect to its broad-
25 cast viewing, and I dare say that the rating of M*A*S*H,

1 if I recall correctly, as a syndicated program was in the
2 vicinity of 18, which is an extraordinarily high figure,
3 and compares to ones, twos and threes for the majority of
4 the Multi-Media shows.

5 Q If I wanted to watch M*A*S*H and I was a cable
6 subscriber, and say I lived in community that imported a
7 half dozen television stations, from major markets, how
8 many opportunities might I have to see M*A*S*H?

9 A Too many.

10 Q If I am a diary keeper, and I am operating a
11 system much like Mr. Thrall described yesterday in
12 Cincinnati, how am I going to know what station am I
13 watching?

14 A It is very simple, Mr. Lutzker, there has been a
15 lot of research -- you know, you are very good about bring-
16 ing this published stuff -- for example, recently there
17 is material published by Warner AMAX, based upon a QUBE
18 system like the one in Cincinnati, which showed that some
19 95 percent of the viewing of stations, the six stations,
20 even in a system with 60 channels, it is not that complicated.
21 And even though I know I have access to 60 channels, I
22 am going to limit my viewing to some favorite channels,
23 like WTBS channel, or WGN -- I don't go looking at the
24 other 54 channels on my system. I know when I am watching
25 WTBS, I know when I am watching WGN, it is a very simple

1 thing, it is very simple entering the diary.

2 Q Mr. Cooper, I have a couple of kids at home who
3 watch television frequently, and if I were a diary keeper,
4 and I am at work from nine until the wee hours, 7:00
5 o'clock, say, and I am a diary keeper, and I have a baby-
6 sitter at home, and my wife works, and the kids go and
7 watch television, are their viewings supposed to be re-
8 flected?

9 A I am sure that -- I assume that somebody might,
10 in some instances, might make an effort at finding out
11 what the kids watched and make an entry. I do not expect
12 the children to make the entries. However, the thing that
13 is very interesting to me is -- and we are just on page
14 one of Exhibit 2 -- is the extent to which children do
15 not make entries in the diaries themselves. The extent
16 to which the adults must be watching these programs when
17 the children are watching, because you will find children's
18 programs listed among the most prominent ones, as far as
19 viewing is concerned.

20 And these are all entries written into diaries.

21 Q And in terms of the specific Nielsen study, the
22 generation of these figures, does Nielsen give you a
23 reliability factor to determine the reliability of the
24 Scooby Doo entries?

25 A I will say it again, no.

1 MR. SCHEINER: Would you explain that answer?

2 MR. LUTZKER: He has explained that answer.

3 BY MR. LUTZKER:

4 Q Do you know whether M*A*S*H appeared on --

5 MR. SCHEINER: Have you finished your answer, Mr.
6 Cooper?

7 THE WITNESS: I would like, if I could, to enter
8 into the record just what I have been talking about in
9 terms of the statistical stuff that Mr. Lutzker has been
10 referring to.

11 MR. LUTZKER: I really would like to have this
12 on cross-examination.

13 CHAIRMAN BRENNAN: It is your option, this is your
14 only chance to cross. I said before I thought it was the
15 proper time, but if you prefer to have it done on redirect,
16 it is entirely up to you.

17 MR. LUTZKER: Well, let him proceed.

18 THE WITNESS: I will read two paragraphs from the
19 November 1982 report on syndicated programs, the section
20 that deals with sample size, statistical interpretation
21 and related.

22 It says, "The user is also reminded that the
23 statistical tolerances herein apply only to a perfect
24 probability sample. The achieved sample is not a perfect
25 probability sample. Data herein are also subject to other

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1 qualifications and the statistical tolerance arises from
2 the use of sampling. For example, the accuracy of this
3 data may be effected by the quality of sampling materials
4 and sampling techniques that deal with sample design, the
5 inability to secure cooperation from all households in pre-
6 designated sample, or the failure of a cooperating house-
7 hold to provide usable data, sometimes referred to as non-
8 responsive error; manners of definition, such as listening
9 and/or viewing, versus tuning; accuracy in the reporting
10 of (a) viewing and/or (b) characteristics of the household
11 or individual, sometimes referred to as response error;
12 five, techniques of inspection and rejection of faulty
13 information from the sample; quality of data processing;
14 inspection of final tabulations and similar production
15 techniques illustrative of, and sometimes categorized as
16 administrative accuracy safeguards.

17 "Therefore, non-sampling errors cannot be warranted
18 to be absent", unquote.

19 I just want to make my reference, again, to the
20 fact that the probability sample, which is something which
21 I have been involved with for over 40 years, I understand
22 the statistics quite well, I understand what two standard
23 deviations are, and what sigmas are, and the rest of it.
24 But I am just trying to say that those things relate to
25 perfect samples, which don't exist in reality.

1 What you have to do is begin to rely upon the
2 people who are doing the survey work, that they are choosing
3 a sample as objectively as they can, that they are carrying
4 out their functions as responsibly as they can, and that
5 they can undergo audits of their procedures that prove that
6 they are carrying out what they say they are carrying out.

7 Beyond that, I just have to rely upon the wisdom
8 and judgment of smarter people than I am, who put their
9 billions of dollars where my mouth is.

10 BY MR. LUTZKER:

11 Q Mr. Cooper, who is the copyright owner of M*A*S*H?

12 A The copyright owner is 20th Century-Fox.

13 Q Is 20th Century-Fox a member of MPAA?

14 A Yes, it is, we are proud to say.

15 Q How many of the -- did M*A*S*H appear on WTBS, WGN
16 and WOR in 1982?

17 A It did not appear on WTBS; I know it was on WGN.
18 Let me check and see -- my trouble with this is that M*A*S*H
19 is not advertised M*A*S*H, but comes under the first M.
20 In Chicago it was not carried by WGN, in Atlanta, as I
21 have already said, it was not carried by WTBS, I am quite
22 sure; it was carried by station WSG, and in New York,
23 it was carried by station WNEW. And none of those is a
24 super station.

25 Q Turn to Nashville Alive for a minute, it is No. 55.

1 I gathered from your testimony this morning that this
2 program was carried only on WTBS in 1982?

3 A To the best of my knowledge, as far as our sample
4 is concerned it was carried only by WTBS.

5 Q Who is the syndicator?

6 A The syndicator, I believe, is Turner Program Sales.
7 Our questions with Turner and WTBS, when we represented
8 them as a claimant, and they were a claimant in the program
9 supplier category, is whether or not we were dealing with
10 a locally produced program, for local transmission, or a
11 syndicated program produced by others for presentation
12 by WTBS, and offered for sale to other stations.

13 And the assurances we had from Turner Program
14 Services was that this was a syndicated program.

15 Q If, in fact, it was not carried by any other
16 station in 1982, would it be proper to characterize it
17 as a syndicated program?

18 A Yes, it would.

19 Q Is there any relationship between Turner Broadcast
20 -- what was the name of it?

21 A Turner Program Sales.

22 Q Turner Program Sales and the owner of WTBS?

23 A I assume that Turner Broadcasting Corporation owns
24 Turner Program Sales. The program was not produced by
25 Turner Broadcasting, or Turner Program Sales, but was

1 produced by an outside program supplier, and licensed to
2 WTBS.

3 Q How often would it have run in 1982?

4 A I would assume it would run once a week. I don't
5 know that. We would have all of those data, if you require
6 it.

7 Q Let's assume it ran once a week, a little while
8 ago you indicated that the average household viewing for
9 WTBS was 313,000 homes, is that correct?

10 A During the average quarter-hour, syndicated series
11 was viewed by 313,000 distant households.

12 Q If you multiply 16 times 313,000 can you tell me
13 what you get?

14 A Now, you want me to make another multiplication
15 after that?

16 Q No.

17 A You don't, why not? You should. My answer is
18 five million.

19 Q Approximately five million. Look at Item No. 55,
20 under household viewing hours. How many household viewing
21 hours did Nashville Alive get, according to your study?

22 A 5,016,000. 5,016,525.

23 Q Approximately five million?

24 A Yes.

25 Q Does it strike you as surprising that Nashville

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1 Alive, in your study appearing only on one station, so
2 we have a way of understanding how one arrives at the view-
3 ing hours, is exactly equal to the average of WTBS?

4 A First of all, I want to point out your error that
5 we are dealing with here -- we established before that the
6 313,000 was per quarter-hour. If a program is a half-hour
7 you multiply that number by two; if it is an hour, you
8 multiply it by four. Have you taken that into account?
9 That is the average number of household viewing homes
10 per average quarter-hour, not per program.

11 Q So, the figure for WTBS for this program --

12 A If it were an hour it would have been 20 million.

13 Q If it were a half-hour program -- do you know if
14 it was an hour, or half-hour program?

15 A I don't know, I think it was an hour, but I am
16 not sure. The point is that the number is higher than
17 this, it is not one of these amazing coincidences.

18 Q Do you know whether this program is still in
19 syndication?

20 A I don't know. I am still tied down with 1982.

21 Q Taking your study at face value, Nashville Alive,
22 which is an half-hour or an hour program, broadcast once
23 a week on WTBS, generates enough viewing hours to rank
24 it 55th out of approximately how many programs?

25 A Thousands.

1 Q Thousands?

2 A Yes.

3 Q Mr. Thrall testified yesterday that the program
4 was cancelled before the February ratings; to his know-
5 ledge, do you have any reason to doubt that?

6 A Yes, I have reason to doubt that. I have a hunch
7 that Mr. Thrall is not an unbiased witness.

8 Q As to whether or not Nashville Alive is still
9 syndicated? I will allow you to supplement the record,
10 if that's --

11 A I don't know, all that I know is we did not pick
12 up any viewing for Nashville Alive after it was cancelled,
13 we did not pick up any viewing for Nashville Alive before
14 it went on the air. This is only for those broadcasts
15 that were made during 1982, which is the scope of this
16 proceeding.

17 Q Let's turn to No. 98.

18 A (Perusing documents)

19 Q This is another CNN television news?

20 A Yes.

21 Q Was that a program in syndication in 1982?

22 A Absolutely.

23 Q And do you know how many stations it ran on?

24 A I would have to look in the books -- in addition
25 to being carried on cable systems directly, it was also

1 syndicated by broadcasting stations. I have here a listing
2 in the ROSP, CNN Headline News, by 75 stations in November
3 1982.

4 Q What is the benefit to cable operators of programs
5 such as CNN Television News, where a cable operator sub-
6 scribes to CNN?

7 A If he subscribes to CNN there would be no benefit.
8 If he does not subscribe to CNN he is getting the program
9 as a retransmitted distant signal without paying 10 or 15
10 cents per month per subscriber.

11 Q You previously indicated that the household viewing
12 hours is not rating data?

13 A Absolutely not.

14 Q Is there anyway to project -- take any program,
15 take the CNN news which shows 2.5 million viewing hours --
16 is there anyway to project how many cable households you
17 are talking about?

18 A I can't, I don't know how to do it.

19 Q No. 93, the movie you mentioned this morning, Love
20 With a Proper Stranger, was that broadcast on WTBS?

21 A I don't know.

22 Q Is that something you can determine?

23 A I could determine it, if you wish the information,
24 I will be happy to tell you.

25 Q If you can provide it for the record, I would

1 I would appreciate it.

2 A You want to know if WTBS carried Love With a
3 Proper Stranger.

4 Q While we are on the question of movies, what per-
5 centage of viewing hours of the 1.5 billion does movies
6 constitute?

7 A Based upon the data in here, movies accounted for
8 32 percent of total non-network viewing; 63 percent for
9 series. So, 100 percent would be 94.

10 Q About 35 percent?

11 A Yes, about 35 percent.

12 Q And that consisted with past years?

13 A Yes.

14 Q There are approximately 70, or so movies on the
15 list of 220 stations?

16 A I haven't counted them, sir.

17 Q You wouldn't know how many of those would have been
18 shown on WTBS?

19 A I don't know -- to me, it is immaterial.

20 Q To your knowledge, does WTBS have any special
21 pricing arrangements with motion picture distributors?

22 A You mean --

23 Q Do motion picture distributors receive additional
24 payment from WTBS because of its national distribution on
25 cable? Or did it in 1982?

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1 A I really can't answer that question. I have heard
2 Turner say that they do, and I have heard others say that
3 they don't, so I don't really know.

4 Q If Turner paid film producers a special amount of
5 money because his program was going to be distributed --
6 this particular show was going to be distributed around
7 the country and on cable, let's make that assumption for
8 the moment -- you have heard speculation to that effect.
9 Would not program producers who are claiming royalties for
10 programs rebroadcast on WTBS be getting a double-dip, as
11 regards to royalties?

12 A Yes, if that were true. But the only show -- the
13 few programs that Turner has acquired national syndication
14 rights to, and from the producing companies, including the
15 program series Centennial, for which it has acquired full
16 rights and paid full national rates for, and the royalties
17 for the program Centennial, which appeared in 1983 on WTBS
18 will be paid to Turner, not to the producing company.

19 Q As far as 1982 --

20 A Centennial didn't air then.

21 Q No, but that arrangement was not made with any
22 other --

23 A There were arrangements made in connection with
24 certain programs, such as certain Cousteau's, certain
25 programs such as the Odyssey Shows -- a limited number of

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1 programs for which Turner had paid for national rights,
2 and therefore, was entitled to the royalties for them. I
3 can assure you that, notwithstanding any statements made
4 by Mr. Turner, that I would be very skeptical if he paid
5 national rates for any of the movies that are listed here
6 that were carried by WTBS.

7 CHAIRMAN BRENNAN: We have established now that
8 Mr. Turner is aware of the Copyright Royalty Tribunal?

9 THE WITNESS: I think it has been whispered into
10 his ear.

11 BY MR. LUTZKER:

12 Q Does MPAA check the copyright status of any works
13 that it is purporting to represent?

14 MR. SCHEINER: Mr. Chairman, we are really raking
15 over old coals. My recollection is that a similar point
16 was made in earlier proceedings.

17 If you have any questions on that score, put it
18 in writing, do it in a timely basis. And I would object
19 on the grounds that the pending question meets neither
20 criteria.

21 MR. LUTZKER: Mr. Chairman, each year we are
22 dealing with a new set of facts. The MPAA represented
23 groups for 1982 are making their claim for programs
24 broadcast in 1982. As MPAA is well aware, the statutory
25 criteria requires payment of money to copyright owners

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1 and the issue of ownership maybe an old hat but --

2 CHAIRMAN BRENNAN: Based on the previous rulings
3 of this body, the objection is overruled.

4 BY MR. LUTZKER:

5 Q Mr. Cooper, does MPAA check the copyright status
6 of any works it purports to represent?

7 A We do not check copyright status of each work of
8 our represented claimants.

9 Q Does MPAA make any claim for any of the following
10 movies, Cast A Dark Shadow; It is a Wonderful World; Sail
11 Into Danger; Under the Red Robe; Specific Destiny; Mutiny,
12 the Capture; or the Strange Loves of Martha Ives?

13 A I can't answer that question. I would take that
14 list, and I would advise you if we are, or aren't doing it.

15 MR. LUTZKER: Let me introduce Multi-Media Exhibit
16 13.

17 (Whereupon, the document was marked for
18 identification as Multi-Media Exhibit 13.)

19 BY MR. LUTZKER:

20 Q Let me just tell you what you are looking at, this
21 is reproductions of TV Guide entries for WTBS, and actually,
22 it is the Atlanta edition of TV Guides for periods during
23 sweep weeks in 1982, and there are arrows pointing to
24 particular programs which I just identified.

25 And at the moment you can't say whether or not

1 MPAA is making any claim for these specific movies.

2 MR. SCHEINER: Excuse me. Mr. Chairman, I don't
3 think these programs in any event amount to very much. I
4 would submit to you that we are now at the stage of sur-
5 rebuttal and I think that is improper for the procedures
6 that we have worked out in the last few days.

7 MR. LUTZKER: Mr. Chairman, I would respectfully
8 disagree. MPAA has introduced exhibits purporting to
9 represent a portion of the programs they are claiming for,
10 among those claimed are movies. They have, on the insistence
11 of counsel, refused to provide further information regard-
12 ing the programs, and the issue of copyright status of
13 their works is an essential part to their claim.

14 And I need to know what the dimensions of their
15 claim is, so we can make findings of fact on our claim.

16 MR. SCHEINER: Mr. Chairman, once again, I submit
17 that this purports to be in response to exhibits that have
18 been exchanged and have been in the possession of counsel
19 for several weeks. He had an opportunity for his rebuttal
20 testimony. I was advised that rebuttal had been presented
21 and closed yesterday.

22 And I do think material, or not, it is improper
23 to raise this matter at this time.

24 CHAIRMAN BRENNAN: The objection is overruled.

25 BY MR. LUTZKER:

1 Q Would it be MPAA's normal practice in determining
2 programming for which claims are made, that you would
3 review TV Guide listings, in particular for WTBS, and if
4 a program owner can be identified for a particular show,
5 that you would credit the owner or distributor -- primarily
6 focus on distributor -- you would credit the distributor
7 of the show with that particular program?

8 A Absolutely true. I should say in looking over
9 this list that, if requested, I would determine if any
10 of these was picked up. One of the things that is
11 interesting -- by a claimant. One of the things that is
12 interesting is the fact that the first one listed, if I
13 read it correctly, was on at 1:45 a.m. on WTBS. There
14 are no Nielsen measurements after 2:00 a.m. in the morning.

15 Q Mr. Cooper, the --

16 MR. SCHEINER: Would you permit him to finish?

17 MR. LUTZKER: He is not responding to a question.

18 MR. SCHEINER: You are interrupting him at the
19 same time.

20 THE WITNESS: I was trying to ascertain whether
21 or not we would be picking up these movies. Look at the
22 second page, and the movie starts at 2:00 a.m., It's a
23 Wonderful World, regardless of whether or not the claimant
24 or non-claimant's program, I was going to say, it is
25 likely that we do not have any ratings information, because

1 there is no ratings information taken after 2:00 a.m.

2 BY MR. LUTZKER:

3 Q Mr. Cooper, if a program is broadcast on WTBS at
4 1:00 a.m., what time is it received in California?

5 A A 1:00 a.m. program would be 11:00 p.m. in
6 California.

7 Q Are ratings made for programs received on cable
8 at 11:00 p.m., or 10:00 p.m.?

9 A Yes, they are.

10 Q So, would a program broadcast on WTBS --

11 A The other time zones would be picked up in this
12 case.

13 Q Thank you.

14 COMMISSIONER RAY: Are any of these particular
15 movies in this list of 229?

16 THE WITNESS: Not that I can tell you.

17 MR. LUTZKER: I would like to introduce Multi-
18 Media Exhibit No. 14.

19 (Whereupon, the document was marked for
20 identification as Multi-Media Exhibit 14)

21 BY MR. LUTZKER:

22 Q Allen, based upon some experiences we had in past
23 years, we endeavored to obviously do some homework in
24 advance of this hearing to get a sense of whether or not
25 on one particular station, which is the dominant station

1 represented on cable, there were any programs that may or
2 may not be protected by copyrights. We did not purport
3 to do an exhaustive study, but we sent some people over
4 and asked the Copyright Office -- and I will provide a
5 blue ribbon copy here that I will also provide to the
6 record which are Xerox that appear here -- of conclusions
7 of copyright examiners with respect to the movies that
8 are identified in WTBS TV Guide listings.

9 Let's just take one, for example, Mutiny, a King
10 Brothers Productions. The program was registered in the
11 1950s and a search of the records indicates the title
12 was not renewed. I know you are not a lawyer, and counsel
13 may object to a legal question, but --

14 MR. SCHEINER: I object. I don't want to dis-
15 appoint you.

16 BY MR. LUTZKER:

17 Q To the extent that works were registered and not
18 renewed, do you have any ideas as to whether or not they
19 remain protected under copyright law?

20 MR. SCHEINER: I object.

21 CHAIRMAN BRENNAN: The objection is overruled.

22 BY MR. LUTZKER:

23 Q Do you know?

24 A I am aware of a dispute, or correspondence with
25 the Copyright Office currently on this issue of the

1 issuance by the Copyright Offices of reports like this.
2 The disputant is a non-MPAA represented company, called
3 Allen Enterprises, and Allen Enterprises has this involve-
4 ment with the Copyright Office in terms of this kind of
5 statement that is made by the Copyright Office on the
6 basis of this search.

7 The reason for the problems is that the Copyright
8 Office search may not disclose other copyrights that cover
9 the properties involved, such as under music performing
10 rights, the book rights and other forms of copyright that
11 are still firm and operable.

12 So, I can't -- that's about the essence of the
13 statement I can make now.

14 Q Well, I don't think we need to belabor the record
15 with certain aspects of that. Are you suggesting -- let
16 me ask this, with respect to that last comment -- are
17 you suggesting that if a film were protected under copy-
18 right, and registration was secured, no renewal was
19 secured, the film may be in the public domain, but an
20 underlining song was included in the movie, the song is
21 protected and remains protected -- let me finish -- that
22 MPAA is entitled to receive cable royalties for that
23 movies' performance?

24 MR. SCHEINER: Mr. Chairman, does your prior
25 ruling --

1 CHAIRMAN BRENNAN: Mr. Scheiner, at this point Mr.
2 Lutzker is simply pursuing the witness's answer.

3 MR. LUTZKER: That is all I am doing.

4 THE WITNESS: I have had communications with some
5 film suppliers who are not claimants, who we do not
6 represent, but whose library consists of films which are,
7 quote, public domain -- they are very old ones, D. W.
8 Griffith's. These people tell me that they have copyrights
9 to those films by virtue of having compiled a soundtrack
10 that is now part of the D. W. Griffith Birth of A Nation-
11 type film. And that this is a valid copyright, as far as
12 the law is concerned.

13 But I am not a copyright lawyer, and --

14 CHAIRMAN BRENNAN: And this body is not being
15 called upon to decide those issues.

16 MR. LUTZKER: Allen, I appreciate the limitations
17 that you are operating under, but I need to understand
18 something with respect to your claim, because it relates
19 to my claim. And it relates to comparisons that you made
20 and total percentages.

21 BY MR. LUTZKER:

22 Q Is MPAA representing the thousands of film makers
23 out there, suggesting that some of the claims maybe based
24 upon underlining works, some of which may be music, and
25 that entitles you to receive royalties from this Tribunal

1 for program supplier categories?

2 A For calendar 1982, all claimants represented by
3 the MPAA were given a list of properties such as the ones
4 that we have shown here, that were being credited to them
5 for royalty purposes, and they were asked to certify that
6 they were the proper owner -- copyright owner of those
7 works in accordance with the appropriate section of the
8 Copyright Act of 1976. And unless and until they signed
9 that certificate, they received not one cent of copyright
10 royalty money, and that is the way that the MPAA has
11 addressed this concern that Mr. Lutzker has indicated
12 before.

13 Now, we demand that the copyright owner certify
14 that he is a proper recipient for each and every property
15 for which he receives credit.

16 COMMISSIONER RAY: Mr. Lutzker, are these the only
17 titles that you did research on?

18 MR. LUTZKER: We only endeavored -- and obviously
19 this is a tremendous task, and it is obviously something
20 which is not our responsibility -- I decided in testing
21 the theory to just get the TV Guides for 1982, for the
22 sweep weeks for Atlanta, figuring that WTBS is going to be
23 their number one station, and there are 7-800 television
24 stations broadcasting movies that are going to be included
25 in their --

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1 COMMISSIONER RAY: May I ask you a question? Of
2 all of the movies that they ran during 1982, these were the
3 only titles that you could find that did not have --

4 MR. LUTZKER: No, all we did was we focused
5 specifically on sweep weeks and I focused specifically on
6 programs of a certain era, I did not make any effort to
7 determine anything else. And it was a search -- I don't
8 have the numbers, but this probably represents 3-5 percent
9 of all of the movies that were reviewed.

10 BY MR. LUTZKER:

11 Q You indicated that you test your clientele's copy-
12 right ownership by the certification process?

13 A Yes, sir.

14 Q Are you referring to the 70-some members of the
15 MPAA that you represent?

16 A There are about 72.

17 Q So you got 72 certifications back from them saying
18 that --

19 A Yes, most of them respond quickly, one in particular
20 was kind of late in responding and we had to withhold
21 money from them.

22 Q In terms of copyright owners of films, are the
23 distributors that you are getting certifications from the
24 owners, or are they representatives of the owners?

25 A I think that in most instances they are representatives.

1 representatives, more than they are owners.

2 Q Do you have any foundation for the assumption that
3 when they sign this certificate they are fully aware of
4 the copyright status of all programs that they distribute?

5 A I don't know what their awareness is, I just know
6 that is what I have asked them to do, and they're certify-
7 ing in clear language. I have asked them in clear language
8 to certify that they are the proper recipients in terms
9 of the Act, and they say they are, and an officer of the
10 company attests to that, for each and every property,
11 individually.

12 Q Mr. Cooper, I know you have labored very hard,
13 and in part it has been in response to some earlier
14 interrogation by me -- in past proceedings. With respect
15 to this issue of copyright ownership, and I may add that
16 I have not been alone in raising the issue -- in terms of
17 MPAA's role in this proceeding, do you feel that you have
18 done all that you could and should do, in recognition of
19 the fact that the Copyright Royalty Tribunal gives MPAA,
20 75 percent of all revenues received from cable systems?

21 A Less deductions.

22 Q Received from cable systems for program re-
23 transmission? Do you feel you have done all you should do,
24 do you feel --

25 A I would let others judge as to whether or not

1 the effort that we have put forth to provide a basis for
2 an equitable distribution of cable copyright royalties
3 among claimants is a good effort.

4 Q Let's turn to Exhibit 3.

5 A (Perusing documents)

6 Q Allen, if I were a programmer, and I had a show
7 that run 36 weeks a year, none of the shows which ran
8 during sweep weeks. And I came to MPAA and said, I would
9 like my fair share of the cable royalty, what would you
10 do?

11 A I would tell them they could get exactly what
12 came up in our study, not a penny less, not a penny more.
13 If you happen to fall outside of the sweep weeks entirely,
14 we regret it but there is not a thing we can do about it.

15 COMMISSIONER RAY: Does that mean you would not
16 represent them?

17 THE WITNESS: We don't know what programs they
18 have. If they are filing claims today for 1983, and
19 and I don't know what shows they have.

20 BY MR. LUTZKER:

21 Q Can you identify The Country Comes Alive entry,
22 can you identify what shows that would reflect?

23 A Mr. Thrall identified those yesterday during his
24 testimony. I think his identification satisfies me.

25 Q That surprises me a little bit, because I worked

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1 with him on the testimony and I heard him, and I don't
2 know whether he identified what shows would have been
3 identified in your sample.

4 A He said he knows what Country Comes Alive includes,
5 and he specifically mentioned each of the programs. He
6 said it was a package, umbrella title for a number of the
7 specials. It is in the record, and he knows better than
8 I do.

9 Q Ernest Tubbs runs in January, it is a Country
10 Comes Alive program, is that reflected in this Country
11 Comes Alive entry?

12 A Unless you have a specific listing of Ernest Tubbs
13 then it either is not picked up at all, or it is included
14 in the Country Comes Alive thing. Furthermore, if you
15 say it ran in January, knowing the way that you distribute
16 these programs, not distributed or carried nationally in
17 January -- are you telling me that they are shown by all
18 the stations carrying it on January 5th?

19 You know it is not the case. What are you
20 trying to pull on me, and the Tribunal?

21 Q All I am trying to find out, Allen, I gather that
22 the Country Comes Alive entry is a summary by, what,
23 diary entrants when they are identifying programs --

24 A It is a Nielsen program title. And presumably,
25 it is the title that is used by the television stations

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1 that air those specials, and they refer to them as Country
2 Comes Alive. And that is probably a title that has been
3 approved and submitted to, and suggested to Multi-Media,
4 or that is just a guess on my part.

5 Q If among the -- Mr. Thrall indicated that WOR
6 carried a number of these specials, if a few of the specials
7 that WOR carried flopped over into sweep periods, they
8 would show up in this study, and they would possibly show
9 up in the Country Comes Alive entry?

10 A They would show up either as Country Comes Alive,
11 or their individual program name.

12 Q Mr. Thrall also indicated that 1711 stations had
13 broadcasts --

14 A He is full of crap, he meant 1711 telecasts.

15 Q All right, 1711 telecasts were made of Country
16 Comes Alive programs, in other words --

17 A I don't know if he used that term. That is in
18 that exhibit.

19 Q -- of which 275 were broadcast during the months
20 of -- which would be within months of sweep periods?

21 A I remember his testimony on that exhibit.

22 Q Is it likely that the 275 telecasts that were made
23 would all be included within the MPAA study?

24 A Not likely. The reason they wouldn't be included
25 is that the 275 telecasts on a different number of stations,

1 and only those -- those are the 275 telecasts that were
2 retransmitted broadcast by any of the 89 stations and
3 would be recorded in the study.

4 Q In past years the CRT has chosen to award Multi-
5 Media programming, based on the quality of the shows,
6 particularly Donahue and Young People's Specials, is there
7 anything that is in this record right now that you have
8 presented which would suggest the Tribunal should change
9 that evaluation with respect to quality?

10 A I understand -- you know, I looked at your
11 Exhibit 2, is it, and I was listening to testimony again
12 yesterday -- and again, I was surprised by the statements
13 that were made, for example, one of the Young People's
14 Specials that is listed as Atomic Legs, is that correct?
15 That was one for which we gave you credit in 1980, we
16 were prepared to give you credit, it was broadcast in 1981.

17 Mr. Thrall, and I think in your testimony, you
18 have indicated these were specials that were produced in
19 1982. I didn't understand that.

20 Q Well, we have never indicated that all of the
21 specials were produced in the year it they produced --
22 Joshua's Confusion --

23 A It was suggested that these were 12 or 10 new
24 specials a year.

25 Q Well, if that was the assumption --

1 A I cannot comment anymore on quality.

2 Q But is there anything in your record, other than
3 this reference, that would suggest that the Tribunal re-
4 consider whatever conclusions it has made in the past?

5 A I have nothing further to say on it.

6 COMMISSIONER RAY: Excuse me. Mr. Cooper, a repeat
7 of a special, whether it is a movie, or an entertainment
8 special, does that reflect upon the quality?

9 THE WITNESS: Yes, to the extent that Mr. Thrall
10 yesterday, and Multi-Media has made an effort to say that
11 because these programs are new, presented for the first
12 time, that these were not repeats, there is some special
13 quality attached to them.

14 MR. LUTZKER: I believe the record will reflect
15 that he indicated that about half of the programs were
16 new in each year.

17 THE WITNESS: The record should speak for itself
18 on that.

19 MR. LUTZKER: I am sure it will.

20 THE WITNESS: But the point that I was making,
21 Commissioner Ray, was that they are somehow saying that
22 first-run, and you understand the term, being not a repeat,
23 represented something greater in quality, a quality
24 implication, versus repeats.

25 And it is only in the connection with that, that

1 I make this reference to Atomic Legs --and I haven't
2 examined this whole history. But it is not -- it doesn't
3 get brownie points for being first-run, I think that is
4 the issue.

5 BY MR. LUTZKER:

6 Q Do you recall Mr. Thrall's statements on the
7 first-runs of Donahue in 1982?

8 A Yes.

9 Q I mean, if you are remarking about one --

10 A No, if I recall correctly, Mr. Thrall said that
11 probably 47 weeks of the broadcast were first-run and
12 five weeks were repeats during the year.

13 Q Approximately 230 original shows in 1982?

14 A And then there would be 25 repeats, or whatever
15 it is. Yes, I don't question that. Again, it is the
16 issue, you made that point in the record, and I think the
17 Tribunal has given it weight.

18 The only thing that I am concerned about is mis-
19 statements, misstatements that are made for the record,
20 I think, need to be corrected.

21 Q And mischaracterizations of what is in the record?

22 A I don't know what that means.

23 Q All right, let's turn to Exhibit 4.

24 A (Perusing documents)

25 Q This, I gather, is another summary of percentages.

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1 Does the 0.5 percent summary for program suppliers that
2 you would attribute to Multi-Media represent the summary
3 of actual viewing of all the programs that Multi-Media
4 produced and distributed in 1982?

5 A That we could, on any basis, attribute to Multi-
6 Media.

7 Q So there are programs that were broadcast in 1982,
8 that you can't attribute to Multi-Media, for which you
9 would not give any --

10 A No, I did not say that at all. I said that we
11 can attribute, on one basis, or another, programs with a
12 total of 7,496,800 household viewing hours in '82 to
13 Multi-Media, that's what I said.

14 Q Well, Exhibit 4 --

15 A I thought we were talking about Exhibit 3.

16 Q It appears there as well. The .5 percent, does
17 that include all Multi-Media programs produced, syndicated,
18 shown on television stations, retransmitted on cable in
19 1982?

20 A During the 16 weeks.

21 Q No, that is not the question. During 1982.

22 A I am answering --

23 Q The question is --

24 MR. SCHEINER: Will you excuse me? I would like
25 to have the question readback.

1 (Whereupon, the question was readback as requested
2 by counsel.

3 BY MR. LUTZKER:

4 Q During 1982?

5 A Let me try to tell you the problems with the
6 question -- I can't answer -- so I can answer it properly,
7 Mr. Lutzker.

8 CHAIRMAN BRENNAN: Mr. Cooper, would you give Mr.
9 Lutzker, a direct answer, then expand, if required.

10 THE WITNESS: I can't answer the question. As I
11 understood the question, he is asking me if this number
12 reflects the total viewing of Multi-Media programs,
13 whether they were broadcast, or whether they were on cable,
14 and whether they were distant cable, or local cable in
15 1982, and I can't answer that question.

16 CHAIRMAN BRENNAN: No, I don't think that is the
17 intent of the question.

18 THE WITNESS: I don't think it was the intent of
19 the question either, sir.

20 BY MR. LUTZKER:

21 Q Let me try and rephrase --

22 MR. SCHEINER: I have the same difficulty, and
23 that is why I asked that it be readback.

24 Try it again.

25 BY MR. LUTZKER:

1 Q Does the .5 reflect all viewing of Multi-Media
2 programming on a distant basis in 1982?

3 A No.

4 Q Do you have any basis to determine what the missing
5 element is?

6 A No, I have no reason for assuming that the figures
7 -- that the 16 weeks represented in this sample, that the
8 figures for 52 weeks would be significantly different than
9 they are for 16 weeks, to Multi-Media, or for any major
10 producer.

11 MR. SCHEINER: Is that responsive, Mr. Lutzker?
12 Is that the point you were trying to make?

13 MR. LUTZKER: I will ask the questions.

14 MR. SCHEINER: No, I am asking you.

15 MR. LUTZKER: If I am satisfied, I am satisfied.

16 MR. SCHEINER: Well, my point is that I am trying
17 to avoid tricky and ambiguous questions. And if that is
18 not responsive, I would like to hear from you on that
19 score.

20 MR. LUTZKER: If I have other questions on that
21 point, then I will ask them.

22 COMMISSIONER HALL: May I ask a question? Are you
23 trying to determine if this .5 represents all that Multi-
24 Media's share would be, the fact that they have specials
25 which are not counted in your survey, notwithstanding, is

1 that the result of this computation? Or have you made
2 some sort of an allowance for those shows which are not?

3 THE WITNESS: I have made no allowance, Commissioner
4 Hall, and if you would look at this listing that we are
5 dealing with here on Exhibit 3. Notice that when we say
6 "no specials", the third item down is the Conway Twitty
7 Show which is a special; the fourth item down is Country
8 Comes Alive, which Mr. Thrall identified as specials.
9 The Top Country Hits program, the third from the bottom,
10 which is listed there, is a special, as identified by
11 Multi-Media. The Young People's Specials is a special
12 as identified by Multi-Media.

13 To say that the data that we have here during the
14 16 weeks for Multi-Media excludes specials is a gross
15 misstatement.

16 MR. LUTZKER: I don't think anyone ever indicated
17 as the record is clear, that your data does not reflect
18 something with respect to Multi-Media specials.

19 BY MR. LUTZKER:

20 Q The question which was posed was does it reflect
21 all the programming or purport to reflect all of the
22 programming viewed on a distant basis, and your answer
23 was no.

24 A My answer was no, and it remains no.

25 Q And in past years, I believe you have indicated,

1 that with respect to your study, the 75 or 78 claimants,
2 they accept the allocations that you have made in your
3 study, the reliability of which you can't verify but you
4 say that they accept it, that is their decision. With
5 respect to other parties, they are free to present their
6 case to the Tribunal.

7 MR. SCHEINER: Is that a question.

8 BY MR. LUTZKER:

9 Q Are they free to present their case to the Tribunal?

10 A Yes.

11 CHAIRMAN BRENNAN: Even though it is after 4:00
12 o'clock on Friday, let's try to --

13 BY MR. LUTZKER:

14 Q With respect to Exhibit 4, you negotiated settle-
15 ments with SIN and NAB, as indicated here?

16 A Yes.

17 Q And you have a note respecting payment of research,
18 did SIN or NAB pay for the research?

19 MR. SCHEINER: Objection. Any questions with
20 respect to agreements with SIN and NAB are confidential.

21 BY MR. LUTZKER:

22 Q Exhibit 5, did I understand your testimony earlier
23 to be that the statements of account filed with the Copy-
24 right Office are unreliable?

25 A They are not to be -- each one is not to be relied

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1 upon individually.

2 Q Does Nielsen use any statements of accounts with
3 respect to preparing their information?

4 A They do not.

5 Q Who prepared the summary information?

6 A Tom Larson, Cable Data Associates.

7 Q Turn to Exhibit 6.

8 A (Perusing documents.)

9 Q This exhibit shows continuous growth on particular
10 super stations, with the exception of WOR, which has
11 declined somewhat. And I know you have gone over this
12 before, but in terms of if one could draw a chart line
13 for WGN and WTBS in terms of the direction of their cable
14 subscription, it would be a pretty steep upward incline,
15 or would it tend to graduate out? Starting from 1978
16 through 1984?

17 A It is a curve with a decending slope.

18 Q Do you have any idea why WOR declined?

19 A Yes, I have a very good idea why WOR declined, WOR
20 changed transponders on satellites and cable systems that
21 were previously able to receive WOR were unable to receive
22 it, until they got --

23 Q The business of retransmitting television stations
24 via satellite began in the late 1970s, is that correct?

25 A The beginning was with -- as far as this industry

1 is concerned, was with HBO's use of it; followed by WTBS
2 on December 16th, 1976..

3 Q And during the first two years of satellite re-
4 transmission, about how many stations were proffered as
5 super stations? Do you have any idea?

6 A Originally there was one more that dropped out of
7 the way, and during this era, and that was KTVU in Oakland-
8 San Francisco.

9 Q Was KTTV also one?

10 A I don't know about proposed, all I know is KTVU
11 was also carried as a super station.

12 Q Turn to Exhibit 7.

13 A (Perusing documents)

14 Q Do you have any explanation as to why the daytime
15 household total is higher than the total day?

16 A Sure. The rating in daytime for the Donahue Show
17 is higher than the total day. The programs that are on
18 during the daytime, the average household figure for all
19 telecasts is reduced because of the lower audiences that
20 Donahue gets in later time periods -- time periods other
21 than the Monday-Friday daytime.

22 Q Did the ratings for Donahue change between 1981
23 and 1982?

24 A Yes, they changed, they declined.

25 Q What were the ratings?

1 A I don't know. Again, I am dealing with -- If we
2 have the data, there is no problem with supplying it.
3 The ratings did decline, if I recall correctly, in February
4 and May of '82, versus February and May of '81.

5 And I am quite sure they may have had a decline in
6 another sweep period.

7 Q When you say ratings, you are talking total house-
8 holds? Or are you talking --

9 A I am talking about the DMA rating. The figure is
10 actually shown on the next page.

11 Q Was the decline substantial?

12 A No, it wasn't.

13 Q On page two of this exhibit, the second column,
14 the DMA carrying -- you indicated that approximately
15 637,000 households -- this is on Donahue.

16 A The difference between 4934 and the 5771, you are
17 referring to Exhibit 8, which has that number on it?

18 Q Okay, eight as well. Let's turn to Exhibit 8.
19 Does this figure cover exclusively cable viewing?

20 A Not at all, it is made very clear that this
21 includes all viewing, including broadcast viewing outside
22 the DMA.

23 Q Are you able to determine from this any net change
24 in off-the-air versus cable viewing, as a percentage?

25 A All I can see is these tremendous reductions from

1 1981 to '82, with respect to these two stations, WGN and
2 WBBM, and if there is anything that you can attribute to
3 it, other than the loss of distant cable carriage, I would
4 be very much surprised.

5 Q How far does the DMA go?

6 A The DMA varies, the DMA is not a mileage situation,
7 the DMA , the designated market areas, includes all
8 counties in which the stations, the broadcast stations from
9 one originating in the community are the strongest of the
10 most viewed stations.

11 In other words, wherever a county is, the Chicago-
12 stations are the most viewed, that county becomes part of
13 the DMA. So, you have some DMAs that extent to 2,000
14 miles and many states, and other, for example, in the
15 Chicago area, where you are cut off by Canada on the
16 north, and with other markets like Milwaukee to the west,
17 and the Indiana markets to the east -- you know, the DMA
18 could be relatively limited.

19 Q What DMA extends 2,000 miles?

20 A The DMA for Salt Lake City, it goes not only
21 to the whole state of Utah, which is several thousand
22 miles, but also into multiple counties in North Dakota --
23 and strange places, little arrows indicating that those
24 counties in different states are part of the designated
25 market area, non-contiguous counties.

1 Q Allen, I know you travel a lot, but I would be
2 surprised if Utah is 2,000. Let's move on to Exhibit 9.

3 A (Perusing documents)

4 Q Your summary for Porter Wagoner has an NR in the
5 November column, and it says "Not responded".

6 A No, it means not reported.

7 Q I'm sorry, four or less stations.

8 A That is correct.

9 Q So that would reflect -- I worked through the
10 calculations on these, and carrying through the assumptions
11 that you have made, and the allocations that Multi-Media
12 attributed to these programs. For Backstage at the Grand
13 Ole Opry, in our time analysis we attributed 38.5 hours;
14 46 for Nashville on the Road; Pop Goes the Country is 52;
15 and Porter Wagoner is 16.

16 Taking out -- assuming everything you are saying,
17 and the point that you are trying to make is this is a
18 substantial overstatement of the Multi-Media claim. I
19 worked through the numbers in the formula, and it comes
20 out to a reduction from approximately 3.18 percent, to
21 approximately 3.1 percent.

22 A I have done this on these four shows, I think the
23 data -- I think that this time factor business, which I
24 have no need for anyhow. I have not done this for the
25 Donahue Show, which is the horse, as far as Multi-Media is

1 concerned, and whatever variations with Donahue, more
2 particularly. I am not making a big case, all that I am
3 saying here, that you have introduced an exhibit, where
4 you have purported to have figures that were reasonably
5 accurate, that the CRT could use, and they just don't
6 work out that way.

7 Q What is the -- strike that. Let's turn to the
8 next exhibit.

9 A (Perusing documents)

10 Q I gather the purpose of this exhibit is to suggest
11 principally, that the time allocation by Multi-Media,
12 roughly correlates with the time allocation for a program
13 like the PTL Club, and therefore, time is of no relevance
14 in the Tribunal's considerations?

15 A Whatever the Tribunal's considerations are, I
16 can't judge.

17 Q Why are you putting this in the record?

18 A I am trying to indicate that time alone is
19 absolutely no factor on which to base an award of total
20 copyright royalties.

21 Q Does time in conjunction with substantial audience
22 become something that has measurable value?

23 A It has a little bit more than time alone, but not
24 much more. Because the issue that you are dealing with
25 is still audience, and as distant signals in cable

1 households, and as far as I am concerned, as far as I know,
2 the total totality of the Multi-Media presentation is
3 absolutely silent with respect to viewing in cable house-
4 holds.

5 Q Turning to Exhibit 11, you make an adjustment in
6 the Multi-Media exhibit to 52 weeks.

7 A We haven't adjusted the Multi-Media exhibit,
8 except to show the figures --

9 Q You have shown the figures adjusted to 52 weeks.
10 There obviously is no one else in this proceeding, other
11 than you and me, in terms of --

12 CHAIRMAN BRENNAN: I wouldn't say that.

13 MR. LUTZKER: Well, in this portion of the proceed-
14 ing, the Phase II for program suppliers. In terms of
15 claimants. There are no other claimants that are making
16 a case.

17 BY MR. LUTZKER:

18 Q Why should the adjustment bear any relevance to
19 this proceeding?

20 A Any funds that the Tribunal awards to you are
21 deducted from the amount that is available to all the
22 other MPAA represented claimants. So, they are very
23 much a party to this, every last one of them.

24 Q I understand they are a party, but they have
25 all accepted the rationale for a 16-week allocation.

1 Multi-Media is the only -- and I assume that NAB and SIN
2 -- I won't get into their settlement, which Multi-Media
3 is also a signatory, but these are the entities that have
4 not accepted the rationale. And in terms of making an
5 adjustment, I still don't see any reason, unless you care
6 to elaborate, why -- assuming your statistics, if Multi-
7 Media wants to play your game, and have its programming
8 fully accounted for, why should not the allocation be made
9 assuming those programs are within your universe?

10 MR. SCHEINER: Mr. Chairman, I have difficulty with
11 the question.

12 MR. LUTZKER: I will pass the question.

13 BY MR. LUTZKER:

14 Q Let's turn to Exhibit 12.

15 A (Perusing documents)

16 Q I look at this, Allen, and wonder when the impact
17 of this hits you, whether or not the MPAA formulation is
18 really a fee generated approach?

19 A It is not.

20 Q I understand you shaking your head, but let me
21 pose the question and then you can respond. Approximately
22 how much of the MPAA viewing hours are attributable to
23 programs on WOR, WTBS and WGN?

24 A I would guess -- I can give you a better figure
25 than a guess -- 60 percent of those three stations.

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1 Q For those three stations?

2 A Yes, sir.

3 Q I just make the comment, it strikes me that looking
4 at this exhibit and recognizing those facts, that you have
5 consciously or unconsciously adopted a fee generated
6 approach.

7 A Well, the reason --

8 MR. SCHEINER: May I object? On my behalf and
9 quite certainly on the behalf of the new commissioners, I
10 don't think the reference to fee generated is very meaning-
11 ful. And if counsel wants to pursue it, I think it should
12 be explained.

13 THE WITNESS: May I --

14 MR. SCHEINER: No, you may not.

15 MR. LUTZKER: I think the witness was prepared to
16 make comment, and I would like him to comment.

17 MR. SCHEINER: -- certainly.

18 MR. LUTZKER: If commissioners wish to follow-up
19 with questions, they are free to do so.

20 CHAIRMAN BRENNAN: Mr. Scheiner, it would not be
21 the first time that my two new colleagues have had additional
22 words added to their vocabulary in this proceeding.

23 THE WITNESS: Should I respond, if I can?

24 CHAIRMAN BRENNAN: Mr. Scheiner was interposing an
25 objection, based on the burden the question placed on the

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1 new commissioners, the objection is overruled.

2 THE WITNESS: I have a very simple statement to
3 make. Under the Copyright Act, the basis of payment of
4 royalties for independent stations was what was called a
5 Fold DSE, one point -- distant signal equivalents. And
6 for each network station, or public television station,
7 that a cable system broadcast, the payment was one-fourth
8 of what they paid for an independent station, or one-
9 quarter of a DSE.

10 From the payments, you could then establish how
11 much each cable system paid to carry the network stations
12 it carried, and the independent stations it carried, and
13 we call that fee generated -- when you added it up.

14 There was criticism made of this that it just put
15 too much emphasis on the independent stations, and unfairly
16 excluded the network stations. And this was the area of
17 principal arguments involving the so-called fee generated
18 approach.

19 When faced with this criticism the 1979 proceeding,
20 for 1980, 1981, and 1982 we have absolutely eliminated
21 the fee generated, we do not pull sample based upon the
22 amount of monies that were paid by cable systems for the
23 carriage, but we count all stations whether they were
24 network affiliates, or independent stations, whether they
25 paid one-fourth of a royalty unit, or a full unit equally.

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1 So, when you say, Mr. Lutzker, is this a fee
2 generated approach, the answer is no, because we are not
3 taking into account the difference in payments made for
4 independent stations, versus network affiliated stations.

5 COMMISSIONER RAY: But are you taking into account
6 the kinds of stations that are most often carried by cable
7 systems?

8 In other words --

9 THE WITNESS: That's right, we have not discrimin-
10 ated --

11 COMMISSIONER RAY: Your sample of 89 stations has
12 an abundance of independent stations.

13 THE WITNESS: No, actually the split is about
14 50-50, and about half of the stations are network affiliates
15 and have are not. And the reason for this decision was
16 the -- partially, the observation by the Tribunal and
17 criticism by other claimant parties, and we have responded.

18 MR. LUTZKER: I may be finished, but let me just
19 make sure --

20 BY MR. LUTZKER:

21 Q Do any of the Multi-Media station produced programs
22 appear in your study?

23 A No. And I will tell -- the answer is no, but
24 neither do they appear in my study, nor, Mr. Lutzker, could
25 I find them, with the exception of Georgia Farm Monitor,

1 in any TV Guide for any of the stations listed.

2 MR. LUTZKER: Okay.

3 CHAIRMAN BRENNAN: Mr. Scheiner?

4 REDIRECT EXAMINATION

5 BY MR. SCHEINER:

6 Q Mr. Cooper, in response to Mr. Lutzker, I believe
7 you said that the conclusion that you arrived at that
8 Multi-Media was entitled to 0.5 of the program suppliers'
9 award did not include all of Multi-Media programs, is that
10 correct?

11 A I said that the number of program hours that
12 constituted 0.5 did not reflect all of Multi-Media's
13 programming during the 52 weeks, and I also made the point,
14 nor did it reflect all of the viewing of all of the other
15 claimants' programming during the 52 weeks.

16 Q Now, when you said that all were not included,
17 you were limiting yourself to the 16-week sweep periods,
18 and in that respect was Multi-Media treated any differently
19 than any other claimants, or the group of claimants in
20 the category of program suppliers?

21 A Absolutely not, exactly the same way.

22 MR. SCHEINER: I have no further questions.

23 CHAIRMAN BRENNAN: Thank you, Allen. We will see
24 you again next week.

25 (Whereupon, the witness was excused.)

1 CHAIRMAN BRENNAN: This concludes the consolidated
2 case. We will recess until 10:00 a.m., Wednesday, question
3 mark, in the Postal Rate Commission.

4 (Whereupon, the hearing was adjourned at 4:45 p.m.,
5 to reconvene at 10:00 a.m., August 1, 1984.)
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C E R T I F I C A T E

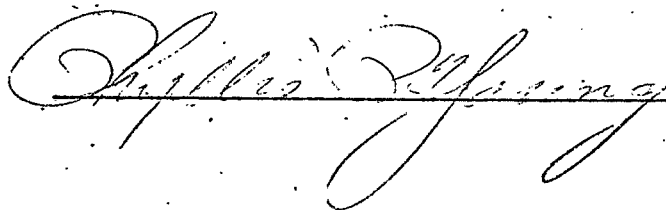
This is to certify that the foregoing transcript
In the matter of:
Cable Royalty Distribution 1982 - Phase II

Before: Thomas Brennan, Chairman
Copyright Royalty Tribunal

Date: July 27, 1984

Place: Room 450
1111 20th Street, N.W.
Washington, D.C.

represents the full and complete proceedings of the
aforementioned matter, as reported and reduced to type-
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